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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 69

**RECONSTRUCTION FINANCE CORPORATION, PRU-
DENCE BONDS CORPORATION, PRESIDENT AND DI-
RECTORS OF THE MANHATTAN COMPANY, ET AL.,
PETITIONERS,**

VS.

**PRUDENCE SECURITIES ADVISORY GROUP, INDE-
PENDENT PRUDENCE BONDHOLDERS COMMITTEE,
ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 8, 1940

CERTIORARI GRANTED JUNE 8, 1940

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PROCEEDINGS IN THE DISTRICT COURT

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Order awarding allowances to Prudence Securities Advisory Group, et al. 1

At a Stated Term of the United States District Court held in and for the Eastern District of New York at the Court House, Washington Street, Borough of Brooklyn, City of New York, on the 14th day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

IN THE MATTER

of

PRUDENCE-BONDS CORPORATION,

Debtor.

In Proceedings for
the Reorganization
of a Corporation
under Section 77B
of the Bankruptcy
Act.
No. 26545.

 2

This Court having heretofore by orders dated respectively March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938, June 6, 1938 and eighteen orders dated January 18, 1938, referred to Honorable James G. Moore, as Special Master, the consideration of the persons or corporations to whom allowances for services and expenses should be made, together with the amounts thereof, for written report and recommendation with his opinion thereon, and in connection therewith said Special Master having been directed to conduct a hearing or hearings at which he was authorized, in his discretion, to receive applications and proofs thereof either by oral testimony or by affidavit as might be determined by said Special Master and notices required by said orders having been duly given and published in conformity therewith and hearings having been held by the Special

 3

- 4 Master as directed by said orders and provision having been made for the filing of applications for allowance and objections thereto, and applications having been filed by the Prudence Securities Advisory Group for compensation for its members for services rendered herein and reimbursement for disbursements reasonably and necessarily incurred herein, by Ralph DeWitt Keller, Secretary of the Prudence Securities Advisory Group and by Percival E. Jackson and Clinton T. Roe, as attorneys for the Prudence Securities Advisory Group, and objections having been filed thereto, and full opportunity having been accorded to all persons in interest to be heard on issues thereby raised, and hearings having been held and proof duly taken and the said proceedings having thereafter been duly closed before the
- 5 Special Master and he having had due deliberation thereon and having thereafter made and filed his intermediate report, dated November 30, 1938 with reference to the application for allowance aforesaid, among others, and the Prudence Securities Advisory Group having thereafter by notice of motion, dated December 1, 1938 moved this Court for an order passing upon the said intermediate report of the Special Master, dated November 30, 1938 and taking such action thereon on said report as the Court may deem advisable and granting such other and further relief as the Court might deem just and proper, and the hearing, pursuant to said notice, having duly come on in open Court on
- 6 December 9, 1938 and the same having been adjourned to December 16, 1938 and having duly come on to be heard on said day

Now, upon reading and filing said notice of motion of the Prudence Securities Advisory Group, dated December 1, 1938, and the affidavit of Hannah Odes, duly verified December 6, 1938 showing proof of due service of the notice of motion and the report of Honorable James G. Moore duly made and filed herein, dated November 30, 1938, insofar as said report relates to the applications for allowance made

and filed by the Prudence Securities Advisory Group for compensation for its members and reimbursement for disbursements necessarily incurred, by Ralph DeWitt Keller as Secretary of the Prudence Securities Advisory Group and by Percival E. Jackson and Clinton T. Roe as attorneys for the Prudence Securities Advisory Group, and the papers, exhibits and the record of the proceedings before said Special Master upon which said report of the Special Master, insofar as it relates to the applications set forth above, is based, and objections to the applications for allowance above made having been filed before the Special Master by Prudence-Bonds Corporation (new corporation), Reconstruction Finance Corporation and John M. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc., being the only parties submitting papers in opposition to the aforesaid applications for allowance before the Special Master and the exceptions filed to said report, insofar as said exceptions affect the recommendations of the Special Master based on the applications for allowance set forth above, and the Court having heard Percival E. Jackson of counsel to the Prudence Securities Advisory Group in support of the confirmation of the report of the Special Master, dated November 30, 1938, insofar as said report passes on the applications for allowance filed by the Prudence Securities Advisory Group for compensation for services rendered by the members thereof and for reimbursement for disbursements necessarily and reasonably incurred herein, by Ralph DeWitt Keller, its Secretary and by Percival E. Jackson and Clinton T. Roe, its counsel, and the Court having heard the attorneys for the exceptants and all other parties sought to be heard thereon and the Court having had due deliberation thereon and having filed its memorandum opinion dated February 1, 1939

Now, on motion of Percival E. Jackson and Clinton T. Roe, attorneys for the Prudence Securities Advisory Group, it is

10 ORDERED, ADJUDGED AND DECREED that the report of Honorable James G. Moore, dated November 30, 1938, insofar as the same relates to the applications for allowance filed by the Prudence Securities Advisory Group for compensation for services rendered by its members and for reimbursement for disbursements necessarily and reasonably incurred herein, by Ralph DeWitt Keller, its Secretary and by Percival E. Jackson and Clinton T. Roe, its counsel, be and the same hereby is in all respects confirmed, and it is further

11 ORDERED, ADJUDGED AND DECREED that Prudence Bonds Corporation (new corporation) be and it hereby is authorized and directed to pay out of the funds in its hands applicable thereto and available therefor to the following persons the following sums respectively, forty-one (41) days after the date of this order:

	George A. Gaston, in full for his services as Chairman of Prudence Securities Advisory Group the sum of	\$ 1,000.00
	Ralph DeWitt Keller in full for his services as Secretary of Prudence Securities Advisory Group the sum of	3,500.00
	Edward S. Doyle, a member of the Prudence Securities Advisory Group, in full for his services rendered as such the sum of	500.00
12	A. C. Horn, a member of the Prudence Securities Advisory Group, in full for his services rendered as such the sum of	500.00
	Arthur M. Abell, a member of the Prudence Securities Advisory Group, in full for his services rendered as such the sum of	500.00
	Charles G. Hannah, a member of the Prudence Securities Advisory Group, in full for his services rendered as such the sum of	500.00

George A. Gaston, Chairman of the
Prudence Securities Advisory
Group, for reimbursement for dis-
bursements necessarily incurred by
the Prudence Securities Advisory
Group, the sum of 10,592.69 13

Matthews Brown & Co., accountants for
the Prudence Securities Advisory
Group, in full for their services ren-
dered as such accountants the sum
of 8,450.00

Percival E. Jackson and Clinton T. Roe,
in full for their compensation for
their services rendered herein and
their disbursements incurred as
counsel to the Prudence Securities
Advisory Group, the sum of 40,177.36 14

ROBERT A. INCH
U. S. D. J.

Order awarding allowances to Metz Committee, et al.

At a Stated Term of the United States District
Court for the Eastern District of New
York, held at the United States Court
House thereof, in the Borough of Brooklyn,
County of Kings, on the 14th day of Febru-
ary, 1939. 15

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

This Court by orders dated March 11, 1936, May 6, 1936,
July 21, 1937, June 3, 1938 and June 6, 1938, and eighteen
orders dated January 18, 1938, having referred to Hon.

16 James G. Moore as Special Master the consideration of the persons or corporations to whom allowances for services or expenses should be made herein; and said Special Master having filed with the Court his report dated November 30, 1938,

17 Now, upon consideration of said report and the petition of Rabenold, Scribner & Miller and Mark Hyman verified October 27, 1937, the supplemental petition of Rabenold, Scribner & Miller and Mark Hyman verified January 18, 1938, the petition of Rabenold, Scribner & Miller and Mark Hyman verified May 7, 1938, the petition of Adam Metz, Charles S. Oakley and Edward W. Smith, as a Committee, verified May 9, 1938, the affidavit of Louis G. Bernstein sworn to September 6, 1938, the exceptions of Rabenold, Scribner & Miller and Mark Hyman dated December 27, 1938, and the affidavit of Louis G. Bernstein sworn to December 30, 1938, on behalf of said petitioners; and the Answer and Objections of Prudence-Bonds Corporation (the new corporation) verified August 19, 1938, the affidavit of Jerome Thralls sworn to August 20, 1938, the affidavit of John W. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc., verified August 22, 1938, the Exceptions of said Prudence-Bonds Corporation verified December 16, 1938, and the Objections of Reconstruction Finance Corporation verified December 23, 1938, in respect to said petitioners; and the notice of hearing dated December 12, 1938; and after arguments by counsel for the several parties in interest; and thereupon upon consideration thereof, and upon filing the memorandum of the Court dated February 1, 1939, it is

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ORDERED that the report of the Special Master dated November 30, 1938, in respect to the compensation for services and expenses to said Adam Metz, Charles S. Oakley and Edward W. Smith, as a Committee, and Rabenold, Scribner & Miller and Mark Hyman as attorneys, is hereby confirmed; and that the Objections and Exceptions to said

report in respect to such compensation for services and expenses are hereby overruled; and it is further

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ORDERED that Prudence-Bonds Corporation (the new corporation) shall make the following payments forty-one days after the entry of this order:

Adam Metz (for services)	\$ 500.00
Charles S. Oakley (for services)	500.00
Edward W. Smith (for services)	500.00
Tracy A. Williams (for services)	3,500.00
Adam Metz, Charles S. Oakley and Edward W. Smith, as a Committee (for disbursements)	3,386.07
Adam Metz, Charles S. Oakley and Edward W. Smith, as a Committee (for services of experts)	300.00
Rabenold, Scribner & Miller and Mark Hyman (for services)	35,000.00
Rabenold, Scribner & Miller (for disbursements)	100.00

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R. A. INCH
U. S. D. J.

Order awarding allowances to Trustees of the Debtor, et al.

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, on the 16th day of February, 1939.

21

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

The Court having heretofore and by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938, June 6, 1938, and eighteen orders dated January 18, 1938, referred

22 to James G. Moore as Special Master, the consideration of the persons or corporations to whom allowances for services or expenses should be made, together with the amount thereof, for written report and recommendation to this Court with his opinion thereon; and the said James G. Moore as Special Master having thereupon given due notice to all parties and their attorneys to file their applications for allowances and to file any and all objections and exceptions thereto, and the time for the filing of objections and exceptions having been extended by the Special Master from time to time, and the Special Master having afforded all interested parties a full opportunity to be heard and offer testimony; and the Special Master having filed his intermediate report dated November 30th, 1938, and the Prudence Advisory Group, Intervenor, having duly moved this Court by motion dated December 1st, 1938 for an order passing upon the said intermediate report of the Special Master dated November 30th, 1938 and taking such action thereon as the Court may deem advisable, and granting such other and further relief as this Court may deem proper; and the hearing pursuant to said notice having duly come on in open court on December 9th, 1938, and the same having been adjourned to December 16th, 1938 and having been duly heard on that day,

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24 Now upon reading and filing said notice of Prudence Advisory Group, Intervenor, dated December 1st, 1938, with proof of due service thereof and upon reading and filing the petition of Charles H. Kelby and Clifford S. Kelsey, verified May 9th, 1938, the petition of Geo. C. Wildermuth, verified May 9th, 1938 and the exhibits attached thereto or referred to therein and said intermediate report of the Special Master, dated November 30, 1938, and the exhibits and papers and the record of the proceeding before said Special Master, insofar as they relate to the allowances of Charles H. Kelby, Clifford S. Kelsey and Geo. C. Wildermuth, in support of their respective applications for allowances, and the affidavit of Thomas W. Streeter, President of the Pru-

dence-Bonds Corporation (New Corporation), verified August 19th, 1938, the affidavit of Jerome Thralls, Authorized Special Representative for the Reconstruction Finance Corporation, verified August 20th, 1938, the affidavit of the Trustees of the Prudence Company, Inc., verified August 22nd, 1938, insofar as they all relate to the allowances of Charles H. Kelby, Clifford S. Kelsey and Geo. C. Wildermuth, being the only papers submitted in opposition to the aforesaid applications for allowances before the Special Master; and after reading and filing the exceptions of the Mayer Committee dated December 9th, 1938, the exceptions and objections of Prudence-Bonds Corporation (New Corporation), dated December 16th, 1938, the objections of the Reconstruction Finance Corporation, dated December 23rd, 1938, insofar as they all relate to the allowances of Charles H. Kelby, Clifford S. Kelsey and Geo. C. Wildermuth, submitted in opposition to the aforesaid applications upon the motion to confirm the Special Master's report; and after hearing Geo. C. Wildermuth in support of said applications, and after hearing Archibald Palmer, Esq., attorney for the Mayer Committee, in opposition to said applications and James F. Dealy, attorney for the Reconstruction Finance Corporation and Charles M. McCarty, attorney for the Prudence-Bonds Corporation (New Corporation), in opposition to said applications, in that the aggregate total of all allowances is excessive and not fair and reasonable; and upon the papers upon which they were granted, and due deliberation having been had thereon, and upon filing the opinion of the Court, it is

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ORDERED, ADJUDGED, DIRECTED, FOUND and DECREED, as follows:

I. That the intermediate report of the Special Master, dated November 30th, 1938, insofar as it related to the applications for allowances by Charles H. Kelby and Clifford S. Kelsey, Trustees of the Prudence-Bonds Corporation and Geo. C. Wildermuth, attorney for the Trustees of the Prudence-Bonds Corporation, be and the same hereby is in all

28 respects approved and confirmed and that the findings of fact and conclusions of law contained in said intermediate report, insofar as they relate to the applications for allowances by Charles H. Kelby, Clifford S. Kelsey and Geo. C. Wildermuth, be and they hereby are made the findings of fact and conclusion of law of this Court; and that the Objections and Exceptions to said report, insofar as they relate to Charles H. Kelby, Clifford S. Kelsey and Geo. C. Wildermuth, be and the same are hereby overruled.

29 II. That the additional sum of Forty-five thousand (\$45,000.) Dollars be and the same is hereby fixed, awarded, and granted as fair and reasonable compensation to Charles H. Kelby, one of the Trustees of the Prudence-Bonds Corporation as and for services rendered by him as Trustee as set forth in his petition dated May 9th, 1938.

III. That the additional sum of Thirty-seven thousand five hundred (\$37,500.) Dollars be and the same is hereby fixed, awarded, and granted as fair and reasonable compensation to Clifford S. Kelsey, one of the Trustees of the Prudence-Bonds Corporation as and for services rendered by him as Trustee as set forth in his petition dated May 9th, 1938.

30 IV. That the additional sum of Eighty thousand (\$80,000.) Dollars be and the same is hereby fixed, awarded, and granted as fair and reasonable compensation to Geo. C. Wildermuth, attorney for the Trustees, as and for legal services rendered by him as attorney for the Trustees as set forth in his petition dated May 9th, 1938.

V. That the said sums aforesaid in paragraphs II, III and IV hereof be paid to the said Charles H. Kelby, Clifford S. Kelsey and Geo. C. Wildermuth by the Prudence-Bonds Corporation (New Corporation) from the fund in their possession for that purpose pursuant to order of this Court dated April 5th, 1938, 41 days after the entry of this Order.

ROBERT A. INCH
U. S. D. J.

**Order awarding allowances to Sixteenth Series
Committee, et al.**

31

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, on the 16th day of February, 1939.

Present: Honorable ROBERT A. INCH, District Judge.

[CAPTION]

32

This Court having heretofore, and by orders dated March 11th, 1936; May 6th, 1936; July 21st, 1937; June 3rd, 1938; and June 6th, 1938, and eighteen orders dated January 18th, 1938, rendered to Honorable James G. Moore, as Special Master, the consideration of the persons or corporations to whom allowances for services or expenses should be made herein, together with the amounts thereof, for written report and recommendation to this Court with his opinion thereon, and the said Special Master having thereupon given due notice to all parties and their attorneys to file their applications for allowances, and various applications for allowances, including the application of Hubert E. Rogers, Spier Whitaker and John F. Condon, Jr., constituting the firm of Rogers & Whitaker, and of Almet Reed Latson and Almet R. Latson, Jr., constituting the firm of Latson & Tamblin, and the application of D. J. Pastorelle, Benjamin Anderson, Ross Mathews and Fred Bergheim, which said last application included as an item thereof compensation to Harry Hall, having been duly filed, and the Special Master having thereafter duly fixed the time for the filing of objections and exceptions to the applications for allowances filed with the Special Master as aforesaid, and the time for the filing of said objections and

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34 exceptions having been extended by the Special Master from time to time, and the Special Master having thereupon fixed a date for the hearing of testimony with reference thereto, and having afforded all interested parties a full opportunity to be heard and offer testimony with reference to said matters, and the Special Master having thereafter duly filed his Intermediate Report, dated November 30th, 1938, and a motion having thereafter been duly made for an order passing upon said Intermediate Report, and the hearing upon said motion having duly come on in open Court on the 9th day of December, 1938, and having thereafter been adjourned to December 16th, 1938, at which time various parties were heard with reference thereto; Now

35 upon reading and filing the petitions of Hubert E. Rogers, Spier Whitaker and John F. Condon, Jr., constituting the firm of Rogers & Whitaker, and of Almet Reed Latson and Almet R. Latson, Jr., constituting the firm of Latson & Tamblyn, and the application of D. J. Pastorelle, Benjamin Anderson, Ross Mathews and Fred Bergheim, which said last application included as an item thereof compensation to Harry Hall, for allowances herein, and the exhibits attached thereto, and the supplementary affidavit of Hubert E. Rogers and Almet R. Latson, Jr. filed with the Special Master in compliance with general order in Bankruptcy XLII, and the reply of Hubert E. Rogers, Spier Whitaker and John F. Condon, Jr., constituting the firm of Rogers

36 & Whitaker, and of Almet Reed Latson and Almet R. Latson, Jr., constituting the firm of Latson & Tamblyn, to the objections of Prudence Bonds Corporation, Reconstruction Finance Corporation and John M. McGrath and William T. Cowin, Trustees of the Prudence Company, Inc., and upon the said Intermediate Report of the Special Master filed herein on November 30th, 1938, and the exhibits, papers and record of proceedings before the said Special Master, and upon the notice of motion herein dated December 1st, 1938, for an order passing upon the said Intermediate Report; all read in support of the motion, and;

Upon reading and filing the answer and objections filed with the Special Master by Prudence Bonds Corporation, the new corporation, pursuant to the plans of reorganization approved and confirmed in these proceedings; and the affidavit of Jerome Thralls, verified the 20th day of August, 1938, on behalf of the Reconstruction Finance Corporation; and the affidavit of John M. McGrath and William T. Cowin, verified the 22nd day of August, 1938, as Trustees of the Prudence Company, Inc., filed with the Special Master, and the exceptions of the so-called Mayer Committee dated December 9th, 1938, and the exceptions and objections of Prudence Bonds Corporation (new corporation) to the reports of the Special Master dated November 30th, 1938 and December 12th, 1938, and the objections of Reconstruction Finance Corporation to the Intermediate Reports on the matter of allowances herein of James G. Moore, Special Master, dated November 30th, 1938 and December 12th, 1938 respectively, and to the confirmation thereof; all read in opposition to the motion, and after hearing Almet R. Latson, Jr. in support of the applications, and Archibald Palmer, attorney for the Mayer Committee; James F. Dealy, attorney for the Reconstruction Finance Corporation; and Charles M. McCarty, attorney for Prudence Bonds Corporation (new corporation), in opposition to said applications, and the Court having thereupon, after due deliberation, rendered its opinion herein, and upon filing said opinion, it is

ORDERED, ADJUDGED, DIRECTED, FOUND AND DECREED as follows:

1. That the Intermediate Report of the Special Master, filed herein on November 30th, 1938, insofar as it relates to the applications for allowances by Hubert E. Rogers, Spier Whitaker and John F. Condon, Jr., constituting the firm of Rogers & Whitaker, and of Almet Reed Latson and Almet R. Latson, Jr., constituting the firm of Latson & Tamblyn, and the application of D. J. Pastorelle, Benjamin

40 Anderson, Ross Mathews and Fred Bergheim (including the item thereof being compensation to Harry Hall), be and the same hereby is in all respects approved and confirmed, and the findings of fact and conclusions of law contained in said Intermediate Report, insofar as they relate to the said applications for allowances, be and they hereby are made the findings of fact and conclusions of law of this Court, and the objections and exceptions to said Report, insofar as they relate to said applications, be and the same hereby are overruled.

41 2. That the sum of Three Thousand and 00/100 (\$3,000.00) Dollars be and the same is hereby fixed, awarded and granted as fair and reasonable compensation to Benjamin Anderson, the Secretary and a member of the Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds, and that Prudence Bonds Corporation (new corporation) be and it hereby is ORDERED AND DIRECTED to make payment of said sum to the said Benjamin Anderson forty-one (41) days after the date of the entry of this order from the fund in its possession for that purpose, pursuant to order of this Court dated April 5th, 1938.

42 3. That the sum of Two Hundred and 00/100 (\$200.00) Dollars be and the same is hereby fixed, awarded and granted as fair and reasonable compensation to D. J. Pastorelle, the Chairman and a member of the Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds, and that Prudence Bonds Corporation (new corporation) be and it hereby is ORDERED AND DIRECTED to make payment of said sum to the said D. J. Pastorelle forty-one (41) days after the date of the entry of this order from the fund in its possession for that purpose, pursuant to order of this Court dated April 5th, 1938.

4. That the sum of Two Hundred and Fifty and 00/100 (\$250.00) Dollars be and the same is hereby fixed, awarded

and granted as fair and reasonable compensation to Fred Bergheim, a member of the Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds, and that Prudence Bonds Corporation (new corporation) be and it hereby is ORDERED AND DIRECTED to make payment of said sum to the said Fred Bergheim forty-one (41) days after the date of the entry of this order from the fund in its possession for that purpose, pursuant to order of this Court dated April 5th, 1938.

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5. That the sum of One Thousand and 00/100 (\$1,000.00) Dollars be and the same is hereby fixed, awarded and granted as fair and reasonable compensation to Harry Hall, an expert witness who appeared in these proceedings on behalf of the Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds, and that Prudence Bonds Corporation (new corporation) be and it hereby is ORDERED AND DIRECTED to make payment of said sum to the said Harry Hall forty-one (41) days after the date of the entry of this order from the fund in its possession for that purpose, pursuant to order of this Court dated April 5th, 1938.

44

6. That the sum of Three Thousand Five Hundred and Sixty-three and 54/100 (\$3,563.54) Dollars be and the same is hereby fixed, awarded and granted as reimbursement to the Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds, for their disbursements in connection with this proceeding, and that Prudence Bonds Corporation (new corporation) be and it hereby is ORDERED AND DIRECTED to make payment of said sum to Benjamin Anderson, as Secretary of said Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds, forty-one (41) days after the date of the entry of this order from the fund in its possession for that purpose, pursuant to order of this Court dated April 5th, 1938.

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46 7. That the sum of Thirty Thousand One Hundred and Eighty-eight and 42/100 (\$30,188.42) Dollars be and the same is hereby fixed, awarded and granted to Hubert E. Rogers, Spier Whitaker and John F. Condon, Jr., constituting the firm of Rogers & Whitaker, and Almet Reed Latson and Almet R. Latson, Jr., constituting the firm of Latson & Tamblyn, as fair and reasonable compensation for their legal services rendered by them as attorneys for the Bondholders Protective Committee, Prudence Bonds Corporation, Sixteenth Series Bonds in this proceeding, and their disbursements in connection therewith, and that the Prudence Bonds Corporation (new corporation) be and it hereby is ORDERED AND DIRECTED to make payment of said sum to Rogers & Whitaker and Latson & Tamblyn, forty-one (41) days after the date of the entry of this order from the fund in its possession for that purpose, pursuant to order of this Court dated April 5th, 1938.

ROBT. A. INCH
U. S. D. J.

Order awarding allowance to Samuel Silbiger.

48 At a Stated Term of the United States District Court for the Eastern District of New York held at the United States Court House, Borough of Brooklyn, City of New York, on the 16th day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

The petitioner, Samuel Silbiger, having presented his application to this Court for an allowance of counsel fees

for services rendered in this proceeding, and the said application having been duly referred by me to James E. Moore, Special Master, for hearing and report, with his recommendation and opinion thereon, and the report of the Special Master having been duly filed herein on November 30th, 1938; and the matter having come on to be heard by me for final disposition and submitted on December 30th, 1938, 49

Now, on reading and filing the petition of Samuel Silbiger, verified October 13th, 1936, his supplemental petition, verified May 7th, 1938; the affidavit of Samuel Silbiger, verified June 7th, 1938; the answer of Reconstruction Finance Corporation (affidavit of Jerome Thralls, verified August 20th, 1938); the answer of Prudence-Bonds Corporation (affidavit of Thomas W. Streeter, verified August 19th, 1938); the answer of Trustees of The Prudence Company, Inc., verified August 22nd, 1938; the said report of the Special Master; the exceptions to said report made and filed herein by the petitioner Samuel Silbiger and dated December 9th, 1938; the exceptions to said report by Reconstruction Finance Corporation, dated December 23rd, 1938; the exceptions and objections to said report by Prudence Bonds Corporation (New Corporation), dated December 16th, 1938; and having heard counsel for the respective parties in support and opposition to said petition, and due deliberation having been had; 50

Now, on motion of Samuel Silbiger, attorney pro se, it is 51

ORDERED, that the report of the Special Master on the application of Samuel Silbiger for an allowance, as same is herein modified, be and the same is hereby confirmed; and it is further

ORDERED, that the application of Samuel Silbiger for an allowance of counsel fees for his services rendered herein, be and the same hereby is granted, and the amount of his compensation be and hereby is fixed at the sum of \$5,000.00; and it is further

52 ORDERED, that Prudence Bonds Corporation (New Corporation) pay on the expiration of 41 days from the entry of this order to Samuel Silbiger as and for his compensation for services rendered herein, the sum of Five Thousand (\$5,000.00) Dollars.

ROBERT A. INCH,
U. S. D. J.

Order awarding allowance to attorneys for Debtor.

53 At a stated term of the United States District Court for the Eastern District of New York held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, on the 21 day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

54 The consideration of the persons or corporations to whom allowances for services and expenses should be made herein, together with the amount thereof, having heretofore been referred by this Court, by orders dated respectively March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938, June 6, 1938, and 18 orders each dated January 18, 1938, to James G. Moore, Esq., as Special Master, for written report and recommendations to this Court with his opinion thereon;

And said James G. Moore, Esq., as Special Master, having given due notice to all parties and their attorneys to file their applications for allowances and any and all objec-

tions and exceptions thereto, and the time for the filing of objections and exceptions having been extended by the Special Master from time to time and all interested parties having been accorded a full opportunity to be heard and offer testimony before the Special Master and the Special Master having filed his Intermediate Report dated November 30, 1938;

55

And the Prudence Advisory Group, Intervenor, having duly moved this Court by motion dated December 1, 1938 for an order passing upon said Intermediate Report of the Special Master dated November 30, 1938, and taking such action thereon as to the Court may seem proper, and the hearing pursuant to said notice having duly come on in open court on December 9, 1938 and having been duly adjourned to December 16, 1938 and having been duly heard in open court on that day;

56

Now, upon reading and filing said notice of motion of Prudence Advisory Group, Intervenor, dated December 1, 1938, with proof of due service thereof, and upon reading and filing the petition of Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, duly verified May 9, 1938 and all exhibits thereto attached, the affidavits of Clinton J. Ruch, verified respectively May 9, 1938 and June 7, 1938, and said Intermediate Report of James G. Moore, Esq., as Special Master, dated November 30, 1938, and the exhibits and papers thereto annexed in so far as they relate to the matter of allowances to Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, as attorneys for the Debtor, in support of their application for an allowance; and upon reading and filing the affidavit of Thomas W. Streeter, President of Prudence Bonds Corporation (new corporation), verified August 19, 1938, the affidavit of Jerome Thralls, special representative of Reconstruction Finance Corporation, verified August 20, 1938, and the affidavit of the Trustees of The Prudence Company, Inc., verified August 22, 1938, in

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58 so far but only in so far as said affidavits and each thereof relate to the matter of allowances to said Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, attorneys for the Debtor herein, being the only papers submitted to the Special Master in opposition to the aforesaid application for allowances; and after reading and filing the exceptions of the Mayer Committee dated December 9, 1938, the exceptions and objections of Prudence Bonds Corporation (new corporation), dated December 16, 1938, the objections of the Reconstruction Finance Corporation dated December 23, 1938, and the exceptions and objections of President and Directors of The Manhattan Company, dated December 27, 1938, in so far but only in so far as said exceptions and

59 objections relate to the matter of allowances to said Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, attorneys for the Debtor aforesaid, submitted in opposition to the aforesaid application upon the motion to confirm the Special Master's report, and on reading and filing the objections of Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, dated December 9, 1938, and the affidavit of Clinton J. Ruch verified December 15, 1938, submitted on behalf of said applicants upon the motion to confirm the Special Master's report; and after arguments by counsel for the several parties in interest; and upon consideration thereof and upon filing the memorandum of the Court dated February 1, 1939, it is

60 ORDERED, that the Intermediate Report of the Special Master dated November 30, 1938, in respect of the allowance of compensation for services and reimbursement of expenses to said Frueauff, Burns, O'Brien & Ruch and Powell & Ruch as attorneys for the Debtor herein, be and it hereby is confirmed; and that all objections and exceptions to said Report in respect to such compensation and expenses are hereby overruled; and it is further

ORDERED, that the sum of sixty-nine thousand dollars (\$69,000) be and the same hereby is fixed, awarded, granted and allowed as reasonable compensation to Frueauff, Burns, O'Brien & Ruch and Powell & Ruch for services rendered herein as attorneys for the Debtor, and the sum of two thousand six hundred twenty-three dollars and nineteen cents (\$2,623.19) is hereby fixed, awarded, granted and allowed to said Frueauff, Burns, O'Brien & Ruch and Powell & Ruch as reimbursement for expenses incurred by them herein, as attorneys for the Debtor as aforesaid; and it is further

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ORDERED, that Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor herein, pay to said Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, forty-one (41) days after the entry of this order, the sum of nine thousand dollars less the payment to Edward Endelman of \$1,500 and the payment to Empire Trust Company of \$1,101.96 out of the fund in their hands for the payment of allowances and expenses in the reorganization of the Seneca Issue of Mortgage Participation Certificates of the Debtor; and it is further

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ORDERED, that Prudence Bonds Corporation (new corporation) pay to said Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, forty-one (41) days after the entry of this order, out of the fund in its possession for the payment of reorganization allowances and expenses pursuant to the order of this Court dated April 5, 1938, the sum of sixty-two thousand, six hundred twenty-three dollars and nineteen cents (\$62,623.19).

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ROBERT A. INCH

U. S. D. J., E. D. N. Y.

64

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

IN THE MATTER

of

PRUDENCE-BONDS CORPORATION,

Debtor.

No. 26545

In Proceedings for
Reorganization
under Section 77B
of the Bankruptcy
Act.

ORDER AMENDING
ORDER

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For the purpose of correcting an unintentional error in the order made and entered herein on February 21, 1939, awarding an allowance to Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, attorneys for the Debtor herein, it is hereby

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ORDERED that the order made and entered herein on February 21, 1939, awarding an allowance to Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, attorneys for the Debtor herein, be and the same is hereby amended by striking out the following words contained in the third ordering part of said order, to wit: "Nine Thousand Dollars less the payment to Edward Endelman of \$1,500 and the payment to Empire Trust Company of \$1,101.96, out of the fund in their hands for the payment of allowances and expenses in the reorganization of the Seneca Issue of Mortgage Participation Certificates of the Debtor", and substituting in lieu thereof the following: "Nine Thousand Dollars, to the extent that said sum is available out of the fund in their hands for the payment of allowances and expenses in the reorganization of the Seneca Issue of Mortgage Participation Certificates of the Debtor, after first deducting from such fund the payment to Edward Endelman of \$1,500 and the payment to Empire Trust Company of \$1,101.96".

Dated: Brooklyn, N. Y., February 24, 1939.

ROBERT A. INCH

U. S. D. J., E. D. N. Y.

**Order awarding allowances to Independent Committee,
et al.**

67

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, on the 21st day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

This Court by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938 and June 6, 1938, and eighteen orders dated January 18, 1938, having referred to Hon. James G. Moore as Special Master the consideration of the persons or corporations to whom allowances for services or expenses should be made herein; and GEORGE M. JAFFIN and LEONARD KLABER, having petitioned the Court for compensation for their services and disbursements in this proceeding; and the INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE, having petitioned the Court for compensation for its services in this proceeding; and said Special Master having filed with the Court his report dated November 30th, 1938, and the Prudence-Bonds Corporation (new corporation) having filed exceptions and objections to said report, and the RECONSTRUCTION FINANCE CORPORATION having also filed objections to said report, and an application for the confirmation of the report of the Special Master having duly come on to be heard,

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69

Now, after hearing GEORGE M. JAFFIN and LEONARD KLABER, on behalf of themselves and as attorneys for INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE, in support of the confirmation of said Special Master's report; and after hearing CHARLES M. McCARTY, attorney for Pru-

70 DENCE-BONDS CORPORATION, and JAMES F. DEALY, attorney for RECONSTRUCTION FINANCE CORPORATION, in opposition thereto, it is

ORDERED, that the report of Hon. James G. Moore, as Special Master herein, in respect to the application of GEORGE M. JAFFIN and LEONARD KLABER and in respect to the application of the INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE for compensation for services and expenses in this proceeding, and all findings of fact and conclusions of law therein in said report contained, be, and the same is in all respects confirmed, approved and adopted by this Court, and it is further

71 ORDERED, that the PRUDENCE-BONDS CORPORATION (new corporation) shall, 41 days after entry of this order, make the following payments out of the fund provided:

To GEORGE M. JAFFIN and LEONARD KLABER (for services)	— \$25,000.00
To GEORGE M. JAFFIN and LEONARD KLABER (for disbursements)	— 1,558.78
To the following members of the INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE for their services:	
DONALD C. BENNETT	— 500.00
EDWARD J. BROOKINE	— 500.00
ESTATE OF HARRY CAPLIN	— 500.00

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ROBERT A. INCH
U. S. D. J.

**Order awarding allowance to Delafield, Marsh, Porter
& Hope.**

73

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, on the 21 day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

IN THE MATTER

of

PRUDENCE-BONDS CORPORATION,

Debtor.

No. 26545.
In Proceedings for
Reorganization
under Section 77B
of the Bankruptcy
Act.

74

This Court by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938 and June 6, 1938, and eighteen orders dated January 18, 1938, having referred to Hon. James G. Moore as Special Master the consideration of the persons or corporations to whom allowances for services or expenses should be made herein; and said Special Master having filed with the Court his intermediate report thereon dated November 30, 1938.

Now, upon consideration of said intermediate report and the petition of Delafield, Marsh, Porter & Hope, verified May 16, 1938, two affidavits of George H. Porter, sworn to May 16, 1938, and the schedules annexed thereto, the Answer and Objections of Prudence-Bonds Corporation (the new corporation), verified August 19, 1938, the affidavit of George H. Porter, sworn to September 29, 1938, replying to the said Answer and Objections, the affidavit of Jerome Thralls, sworn to August 20, 1938, the affidavit of John W. McGrath and William T. Cowin, as Trustees of The Prudence Company, Inc., sworn to August 22, 1938, the Exceptions of said

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76 Prudence-Bonds Corporation verified December 16, 1938, and the Objections of Reconstruction Finance Corporation, verified December 23, 1938, the notice of hearing dated December 12, 1938; and after hearing counsel for the several parties in interest; and upon consideration of the arguments thereof, and upon filing the memorandum of the Court dated February 1, 1939, it is

77 ORDERED, that the intermediate report of said Special Master dated November 30, 1938 be and the same hereby is confirmed in so far as it relates to the allowances of the law firm of Delafield, Marsh, Porter & Hope, and that said firm hereby is allowed the sum of \$20,000 as compensation for such legal services rendered by them as are set forth in Schedule C annexed to the affidavit of George H. Porter sworn to May 16, 1938 and filed herein with the aforesaid petition of Delafield, Marsh, Porter & Hope verified May 16, 1938; hereby reserving determination as to the compensation to which said firm is entitled for legal services other than those set forth in said Schedule C, as well as with respect to the amount of their disbursements allowable herein, and it is further

78 ORDERED, that the amounts herein allowed to the said law firm of Delafield, Marsh, Porter & Hope shall be paid to them forty-one days after the entry of this order by Prudence-Bonds Corporation, the corporation formed in pursuance of the Plan of Reorganization confirmed herein, out of moneys held in its possession for such purpose.

ROBERT A. INCH,
U. S. D. J.

Order awarding allowances to Tenth Series Committee, *et al.* 79

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

This Court having heretofore by memorandum dated February 1, 1939, confirmed the Intermediate Report of the Special Master dated November 30, 1938, on allowances for services rendered and reimbursement for expenses incurred to Prudence-Bonds Tenth Series Committee and to its attorney, Grosvenor Calkins, and upon all the papers filed and proceedings heretofore had herein, and due deliberation having been had thereon, it is

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On motion of Grosvenor Calkins, attorney for Prudence-Bonds Tenth Series Committee, and pro se.

ORDERED, ADJUDGED, FOUND, DIRECTED, AND DECREED as follows:

1. That all exceptions and objections heretofore filed to the Intermediate Report of the Special Master dated November 30, 1938, insofar as said exceptions and objections apply to the recommendations of the Special Master in said Intermediate Report contained for allowances to Prudence-Bonds Tenth Series Committee and to Grosvenor Calkins, its attorney, for services rendered and for reimbursement for expenses incurred in this reorganization proceeding be and the same are in all respects overruled, disallowed, and dismissed.

81

2. That the Intermediate Report of the Special Master dated November 30, 1938, be and the same is in all respects approved and confirmed as to allowances therein recommended for Prudence-Bonds Tenth Series Committee and

- 82 Grosvenor Calkins, its attorney, for services rendered and for reimbursement for expenses incurred in this reorganization proceeding.

3. That Prudence-Bonds Corporation (the New Corporation) be and it hereby is authorized and directed to pay to Prudence-Bonds Tenth Series Committee and to Grosvenor Calkins as allowances for services rendered and reimbursement for expenses incurred in this reorganization proceeding the following amounts out of the Fund in its possession applicable thereto pursuant to the order of this Court dated April 5, 1938, forty-one days after the entry of this order:

83	To Prudence-Bonds Tenth Series Committee:		
	For services of Committee	\$1,500.00	
	For services of E. Bailey		
	Frye, its Secretary	1,220.00	
	For reimbursement of expenses		
		976.26	
	Total		\$ 3,696.26
	To Grosvenor Calkins, attorney for Prudence-Bonds Tenth Series Committee, in full for all services		\$10,000.00

- 84 Dated: Brooklyn, N. Y.
February 21, 1939.

ROBERT A. INCH,
U. S. D. J. E. D. N. Y.

Order awarding allowance to General Committee.

85

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

|
[CAPTION]

An application for an allowance as compensation for services rendered in the above-entitled proceeding having been made by the General Committee for Prudence Securities, an intervenor herein, and the said application, together with various other applications for allowances having been duly referred to Hon. James G. Moore, Special Master for consideration, and the said Special Master having filed with the Clerk of this Court an Intermediate Report on November 30, 1938, and a Supplemental Intermediate Report on December 16, 1938, and the matter having been duly brought on for hearing by a notice of motion dated the 1st day of December, 1938, returnable the 9th day of December, 1938, and adjourned to the 16th day of December, 1938,

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Now, THEREFORE, on reading and filing the aforesaid Intermediate Reports of the Special Master, upon the said application of the General Committee for Prudence Securities, verified the 6th day of May, 1938, together with schedules and exhibits thereto annexed, upon the answering affidavit of Prudence-Bonds Corporation, sworn to the 19th day of August, 1938, by James W. Streeter, President, together with the exhibits thereto annexed, upon the affidavit of Charles M. McCarty, sworn to the 19th day of August, 1938, annexed to the aforesaid answer, upon the answering affidavit of Reconstruction Finance Corporation, sworn to by Jerome Thralls, Esq. on the 20th day of August, 1938, together with the exhibits thereto annexed, upon the answering affidavit of the Trustees of The Prudence Company, Inc., Debtor, sworn to by John M. McGrath and

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- 88 William T. Cowin, Trustees, on the 22nd day of August, 1938, upon the reply affidavit of John R. Walsh, Esq., sworn to the 13th day of August, 1938, upon the notice of motion dated the 1st day of December, 1938, signed by Percival E. Jackson and Clinton T. Roe, counsel to Prudence Advisory Group, returnable the 9th day of December, 1938, requesting this Court to pass upon the aforesaid Intermediate Reports of the Special Master, upon the objections to the confirmation of the said Intermediate Reports filed by Prudence-Bonds Corporation, dated the 16th day of December, 1938, upon the objections to the confirmation of the said Reports filed by Reconstruction Finance Corporation, dated the 23rd day of December, 1938, upon the affidavit of John
- 89 R. Walsh, sworn to the 4th day of January, 1939, and after hearing John R. Walsh, Esq., Secretary to the General Committee for Prudence Securities, in support of the said application of the said Committee, and Charles M. McCarty, Esq., Attorney for Prudence-Bonds Corporation, and James F. Dealy, Esq., Attorney for Reconstruction Finance Corporation, having appeared in opposition to the confirmation of the said Intermediate Reports of the Special Master in accordance with their objections filed as aforesaid, and due deliberation having been had thereon, and the Court having filed its decision, dated the 1st day of February, 1939; it is hereby

- 90 ORDERED that the said Intermediate Reports of the Special Master insofar as they relate to the General Committee for Prudence Securities be and the same hereby are confirmed; and it is further

ORDERED that the said application of the General Committee for Prudence Securities be and the same hereby is granted and the amounts payable shall be as follows:

To John R. Walsh, Esq., Secretary to the Committee	\$ 10,000
E. John Burns, Esq.	500
Bernard Greenberg	250
Jesse Adler	250

and it is further

ORDERED that the said Committee be and it hereby is granted an allowance for its disbursements in the sum of \$3,714.02; and it is further

ORDERED that the Prudence-Bonds Corporation be and it hereby is authorized and directed to make the aforesaid payments forty-one days after the entry of this order out of the fund provided.

Dated: Brooklyn, New York, February 21, 1939.

ROBERT A. INCH

U. S. D. J., E. D. N. Y.

Order awarding allowance to Jacob A. Freedman.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

An application for an allowance as compensation for services rendered in the above entitled proceeding having been made by Messrs. Cullen & Dykman, Edward Endelman and Jacob A. Freedman, as associate counsel to the General Committee for Prudence Securities, an intervenor herein, and the said application, together with various other applications for allowances having been duly referred to Hon. James G. Moore, Special Master, for consideration, and the said Special Master having filed with the Clerk of this Court an Intermediate Report on November 30, 1938, and a Supplemental Intermediate Report on December 16, 1938, and the matter having been duly brought on for hearing by a notice of motion dated the 1st day of December, 1938, re-

turnable the 9th day of December, 1938, and adjourned to the 16th day of December, 1938,

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Now, **THEREFORE**, on reading and filing the aforesaid Intermediate Reports of the Special Master, and upon the joint petition of Cullen & Dykman, Edward Endelman and Jacob A. Freedman, verified the 7th day of May, 1938, together with the affidavits thereto annexed, verified the same day, and duly filed herein, upon the answering affidavit of Prudence Bonds Corporation, sworn to the 19th day of August, 1938, by James W. Streeter, President, together with the exhibits thereto annexed, upon the affidavit of Charles M. McCarty, sworn to the 19th day of August, 1938, annexed to the aforesaid answer, upon the answering affi-

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davit of Reconstruction Finance Corporation, sworn to by Jerome Thralls, Esq., on the 20th day of August, 1938, together with the exhibits thereto annexed, upon the answering affidavit of the Trustees of The Prudence Company, Inc., Debtor, sworn to by John M. McGrath and William T. Cowin, Trustees, on the 22nd day of August, 1938, upon the reply affidavit sworn to by Edward Endelman and Jacob A. Freedman on the 6th day of September, 1938, with due proof of service thereof, upon the affidavit of Ralph W. Crolly, Esq., sworn to the 1st day of December, 1938, duly filed with the Clerk of this Court and in accordance with which Messrs. Cullen & Dykman withdrew from participation in any allowance which may be granted the said associate counsel for

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the General Committee for Prudence Securities, upon the notice of motion dated the 1st day of December, 1938, signed by Percival E. Jackson and Clinton T. Roe, counsel to Prudence Advisory Group, returnable the 9th day of December, 1938, requesting this Court to pass upon the aforesaid Intermediate Reports of the Special Master, upon the exceptions dated the 9th day of December, 1938, filed with the Clerk of this Court by Edward Endelman and Jacob A. Freedman, with proof of due service thereof, upon the statement and affidavit thereto annexed of John R. Walsh, Esq., Secretary

to the General Committee for Prudence Securities, sworn to the 16th day of December, 1938, and filed with the Clerk of this Court at the hearing of the said motion on December 16, 1938, upon the objections to the confirmation of the said Intermediate Reports filed by Prudence-Bonds Corporation, dated the 16th day of December, 1938, upon the objections to the confirmation to the said Reports filed by Reconstruction Finance Corporation dated the 23rd day of December, 1938, upon the joint affidavit of Edward Endelman and Jacob A. Freedman, sworn to the 27th day of December, 1938, together with the exhibits thereto annexed and proof of due service thereof, and after hearing Edward Endelman and Jacob A. Freedman who appeared on the 16th day of December, 1938, in support of their application, and Charles M. McCarty, Esq., Attorney for Prudence-Bonds Corporation, and James F. Dealy, Esq., Attorney for Reconstruction Finance Corporation, having appeared in opposition to the said Intermediate Reports of the Special Master in accordance with their objections, filed as aforesaid, to the confirmation of the said Reports of the Special Master, and due deliberation having been had hereon, and the Court having filed its decision dated the 1st day of February, 1939; it is hereby

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ORDERED, that the Intermediate Reports of the Special Master insofar as they relate to the joint application for an allowance by Cullen & Dykman, Edward Endelman and Jacob A. Freedman, as associate counsel to the General Committee for Prudence Securities, be and the same is hereby confirmed in all respects, and the said joint application is hereby denied in all respects; and it is further

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ORDERED, that the joint application of Edward Endelman and Jacob A. Freedman, as remaining Associate Counsel to the General Committee for Prudence Securities after the withdrawal, as aforestated, by Messrs. Cullen & Dykman from any participation in any such joint allowance, be and the same is hereby denied in all respects; and it is further

100 ORDERED, that an allowance to Jacob A. Freedman, Esq., individually, is hereby granted in the sum of \$5000.00, and it is further

ORDERED, that the Prudence-Bonds Corporation be and it hereby is directed to pay the said sum of \$5000.00 to Jacob A. Freedman 41 days after the entry of this order out of the fund provided.

Dated: Brooklyn, New York, February 21, 1939.

ROBERT A. INCH
U. S. D. J. E. D. N. Y.

101 **Order awarding allowance to Archibald Palmer.**

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House, in the Borough of Brooklyn, City of New York, on the 21st day of February, 1939.

Present: Honorable ROBERT A. INCH, District Judge.

[CAPTION]

102 THIS Court, by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938, June 6, 1938, and eighteen orders dated January 18, 1938, having referred to James G. Moore, Esq., the consideration of the persons or corporations to whom allowances for services and expenses should be made herein, and said Special Master having filed his report, dated November 30, 1938, with reference to such applications for allowance, and ARCHIBALD PALMER, attorney for the intervening bondholders' committee known as the Mayer Committee, having filed his exceptions, dated De-

cember 9, 1938, to the said report of the Special Master dated November 30, 1938, as affecting the application for allowance of said Archibald Palmer, 103

Now, upon the various orders of reference to the said Special Master, upon the petition for allowance of Archibald Palmer, as attorney for the intervening bondholders' committee known as the Mayer Committee, duly verified the 9th day of May, 1938, the Report submitted by James G. Moore, Esq., dated November 30, 1938, as Special Master, the exceptions to the said Report of said Special Master, as affecting the application for allowance of Archibald Palmer, duly verified the 9th day of December, 1938, and duly filed herein, and after argument on the exceptions to the said report of the Special Master, and upon the memorandum decision of the Court, dated February 1, 1939, it is 104

ORDERED, that the report of James G. Moore, Esq., Special Master herein, dated November 30, 1938, with respect to compensation for services rendered by ARCHIBALD PALMER, as attorney for the intervening bondholders' committee known as the Mayer Committee, be, and the same hereby is, amended so as to provide that ARCHIBALD PALMER be allowed the sum of \$1,500.00 for the beneficial services rendered to the estate in reorganization, and the exceptions so filed by said ARCHIBALD PALMER to the aforesaid report in all other respects be, and the same hereby are, overruled; and it is further 105

ORDERED, that the PRUDENCE BONDS CORPORATION, the New Corporation, be, and it hereby is, directed to make the following payment forty-one days after the entry of this order, out of the fund provided, to wit:

Archibald Palmer,
Attorney for the Intervening
Bondholders' Committee
Known as the Mayer Committee_____ \$1,500.00

ROBERT A. INCH
U. S. D. J.

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Order awarding allowance to MacIntyre, McNally & Downey.

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

107

This Court by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938 and June 6, 1938, and eighteen orders dated January 18, 1938, having referred to Hon. James G. Moore as Special Master the consideration of the persons or corporations to whom allowances for services or expenses should be made herein; and said Special Master having filed with the Court his intermediate report thereon dated November 30, 1938,

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Now, upon consideration of said intermediate report and the petition of City Bank Farmers Trust Company verified April 8, 1938, and the affidavit of James B. McNally, Esq., sworn to April 7, 1938 annexed thereto, the Answer and Objections of Prudence-Bonds Corporation (the new corporation), verified August 19, 1938, and the affidavit of Jerome Thralls sworn to August 20, 1938, and the affidavit of John W. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc., verified August 22, 1938, and the Exceptions of said Prudence-Bonds Corporation verified December 16, 1938, and the Objections of Reconstruction Finance Corporation verified December 23, 1938, and the notice of hearing dated December 12, 1938; and after hearing counsel for those several parties; and upon consideration of the arguments thereof, and on filing the memorandum of the Court dated February 1, 1939, it is

ORDERED, that the intermediate report of said Special Master dated November 30, 1938 be and the same hereby is

confirmed in so far as the same recommends an allowance of \$680. as compensation for services to Messrs. MacIntyre, McNally & Downey, and \$393.67 for their disbursements, and it is further 109

ORDERED, that the compensation of Messrs. MacIntyre, McNally & Downey for legal services rendered by them be and the same hereby is fixed in the sum of \$680, and that in addition thereto they shall be allowed to them the sum of \$393.67 as their disbursements, and it is further

ORDERED, that the amounts herein allowed to the said MacIntyre, McNally & Downey for their compensation and disbursements shall be paid to them by Prudence-Bonds Corporation, the corporation formed in pursuance of the Plan of Reorganization confirmed herein, out of moneys, forty-one days after the entry of this order and held in its possession for such purpose. 110

Dated: New York, N. Y.
February 21, 1939.

ROBERT A. INCH,
U. S. D. J.

Order denying allowance to Edward Endelman and Jacob A. Freedman.

UNITED STATES DISTRICT COURT, 111
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

An application for an allowance as compensation for services rendered in the above-entitled proceeding having been made by Messrs. Cullen & Dykman, Edward Endelman and Jacob A. Freedman, as associate counsel to the General Committee for Prudence Securities, an intervenor

112 herein, and the said application, together with various other applications for allowances having been duly referred to Hon. James G. Moore, Special Master, for consideration, and the said Special Master having filed with the Clerk of this Court an Intermediate Report on November 30, 1938, and a Supplemental Intermediate Report on December 16, 1938, and the matter having been duly brought on for hearing by a notice of motion dated the 1st day of December, 1938, returnable the 9th day of December, 1938, and adjourned to the 16th day of December, 1938.

113 Now, THEREFORE, on reading and filing the said Intermediate Reports of the Special Master, upon the joint petition of Cullen & Dykman, Edward Endelman and Jacob A. Freedman, verified the 7th day of May, 1938, together with and affidavits thereto annexed, verified the same day, and duly filed herein, upon the answering affidavit of Prudence-Bonds Corporation, sworn to the 19th day of August, 1938, by James W. Strecker, President, together with the exhibits thereto annexed, upon the affidavit of Charles M. McCarty, sworn to the 19th day of August, 1938, annexed to the aforesaid answer, upon the answering affidavit of Reconstruction Finance Corporation, sworn to by Jerome Thralls, Esq., on the 20th day of August, 1938, together with the exhibits thereto annexed, upon the answering affidavit of the Trustees of The Prudence Company, Inc., Debtor, sworn to by John M. McGrath and William T. Cowin, Trustees, on the 22nd day of August, 1938, upon the reply affidavit sworn to by Edward Endelman and Jacob A. Freedman on the 6th day of September, 1938, with due proof of service thereof, upon the affidavit of Ralph W. Crolly, Esq., sworn to the 1st day of December, 1938, duly filed with the Clerk of this Court and in accordance with which Messrs. Cullen & Dykman withdrew from participation in any allowance which may be granted the said associate counsel for the General Committee for Prudence Securities, upon the notice of motion dated the 1st day of December, 1938, signed by

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Percival E. Jackson and Clinton T. Roe, counsel to Prudence Advisory Group, returnable the 9th day of December, 1938, requesting this Court to pass upon the aforesaid Intermediate Reports of the Special Master, upon the exceptions dated the 9th day of December, 1938, filed with the Clerk of this Court by Edward Endelman and Jacob A. Freedman, with proof of due service thereof, upon the statement and affidavit thereto annexed of John R. Walsh, Esq., Secretary to the General Committee for Prudence Securities, sworn to the 16th day of December, 1938, and filed with the Clerk of this Court at the hearing of the said motion on December 16, 1938, upon the objections to the confirmation of the said Intermediate Reports filed by Prudence-Bonds Corporation, dated the 16th day of December, 1938, upon the objections to the confirmation to the said Reports filed by Reconstruction Finance Corporation dated the 23rd day of December, 1938, upon the joint affidavit of Edward Endelman and Jacob A. Freedman, sworn to the 27th day of December, 1938, together with the exhibits thereto annexed and proof of due service thereof, and after hearing Edward Endelman and Jacob A. Freedman who appeared on the 16th day of December, 1938, in support of their application, and Charles M. McCarty, Esq., Attorney for Prudence-Bonds Corporation, and James F. Dealy, Esq., Attorney for Reconstruction Finance Corporation, having appeared in opposition to the said Intermediate Reports of the Special Master in accordance with their objections, filed as aforesaid, to the confirmation of the said Reports of the Special Master, and due deliberation having been had herein, and the Court having filed its decision dated the 1st day of February, 1939; it is hereby

ORDERED, that the Intermediate Reports of the Special Master insofar as they relate to the joint application for an allowance by Cullen & Dykman, Edward Endelman and Jacob A. Freedman, as associate counsel to the General Committee for Prudence Securities, be and the same is

118 hereby confirmed in all respects, and the said joint application is hereby denied in all respects; and it is further

ORDERED, that the joint application of Edward Endelman and Jacob A. Freedman, as remaining associate counsel to the General Committee for Prudence Securities after the withdrawal, as aforestated, by Messrs. Cullen & Dykman from any participation in any such joint allowance, be and the same is hereby denied in all respects.

Dated: Brooklyn, New York, February 21, 1939.

ROBERT A. INCH,
U. S. D. J. E. D. N. Y.

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General order of Feb. 21, 1939 awarding and denying various applications for allowances.

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 21 day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

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[CAPTION]

This Court having heretofore and by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938, June 6, 1938 and eighteen (18) separate orders each dated January 18, 1938, having referred the consideration of the persons and corporations to whom allowances for services or expenses should be made under the Plans of Reorganization confirmed in these proceedings and the provisions of Section 77B of the Bankruptcy Act, together with the amounts

thereof, to Special Master James G. Moore, for written report and recommendation to this Court with his opinion thereon, and proceedings with respect to such matter having been thereafter duly had before the said Special Master and the said Special Master having filed herein an Intermediate Report dated November 30, 1938, passing upon the applications for allowances of all of the applicants herein except the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective counsel appearing herein, and by a notice dated November 30, 1938, having given notice of the filing of said Report, and Prudence Securities Advisory Group, one of the intervenors herein, by notice of motion dated December 1, 1938, having moved herein for an order passing upon said Intermediate Report, taking such action thereon as this Court might deem advisable and granting such other and further relief as to this Court might seem just and proper, and said motion having duly come on to be heard before me on the 9th day of December, 1938, and having been duly adjourned by me to the 16th day of December, 1938, and said Special Master having filed herein an Intermediate Report dated December 12, 1938, passing upon the applications for allowances of the said eleven (11) Corporate Trustees and their respective counsel appearing herein, and by a notice dated December 12, 1938, having given notice of the filing of said Report and notice that said Report would be handed up to me on the 16th day of December, 1938, for consideration in conjunction with said Special Master's Report dated November 30, 1938, then and there before me for consideration and the consideration of said two (2) Reports having duly come on to be heard before me on the 16th day of December, 1938;

Now, upon reading and filing the said Intermediate Report of Special Master James G. Moore dated November 30, 1938 and proof of due service of said notice of filing dated November 30, 1938, the notice of motion of Prudence Secur-

- ities Advisory Group, intervenor, dated December 1, 1938, with proof of due service thereof, the said Intermediate Report of said Special Master dated December 12, 1938, with proof of due service of said notice of filing and hearing dated December 12, 1938, and the applications for allowances and the objections and exceptions thereto and the Exhibits and papers and the record of the proceedings had before said Special Master in respect of said Reports, including the papers and exhibits set forth in "Appendix A" of each of said Reports; and upon reading and filing the exceptions of Harry H. Oshrin, dated December 8, 1938; the affidavit of George T. Manuel, verified December 8, 1938; the exceptions of Leon London, dated December 9, 1938; the exceptions of Samuel Silbiger, dated December 9, 1938; the exceptions of Edward Endelman and Jacob A. Freedman, dated December 9, 1938; the affidavits of Edward Endelman, verified December 2, 1938 and December 3, 1938, respectively; the joint affidavit of Edward Endelman and Jacob A. Freedman, verified December 1, 1938; the affidavit of Ralph W. Crolly, verified December 1, 1938; the joint affidavit of Edward Endelman and Jacob A. Freedman, verified December 27, 1938; the letter to the Court from General Committee for Prudence Securities, dated December 18, 1938; the affidavit of John R. Walsh, verified January 4, 1939; the letter to the Court from John R. Walsh, dated January 4, 1939; the exceptions of Archibald Palmer, verified December 9, 1938; the exceptions of Archibald Palmer, verified December 9, 1938; the exceptions of Archibald Palmer, verified December 15, 1938; the affidavit of Alfred E. Herz, verified December 6, 1938; the affidavit of Alfred E. Herz, verified December 13, 1938; the objections of Frueauff, Burns, O'Brien & Ruch and Powell & Ruch, verified December 9, 1938; the affidavit of Clinton J. Ruch, verified December 15, 1938; the objections of the Trustees of New York Investors, Inc., verified December 9, 1938; the affidavit of Charles H. Kelby, verified December 13, 1938;

the objections of Reconstruction Finance Corporation, verified December 23, 1938; the exceptions of The Marine Midland Trust Company of New York, as Trustee of Prudence-Bonds, Sixteenth Series, dated December 23, 1938; the exceptions of Sullivan & Cromwell, dated December 23, 1938; the exceptions of Rabenold, Scribner & Miller and Mark Hyman, dated December 27, 1938; the affidavit of Louis G. Bernstein, verified December 30, 1938; the exceptions of Charles L. Kingsley, verified December 27, 1938; the exceptions of Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, dated December 27, 1938; the exceptions of Cullen & Dykman, dated December 27, 1938; the affidavit of David Barnett, verified December 27, 1938; the affidavit of David Barnett, verified December 30, 1938; the affidavit of A. Frederick Kenthen, verified December 27, 1938; the affidavit of Charles G. Bond, verified December 23, 1938; the exceptions of Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, its attorneys, dated December 7, 1938; the affidavit of Nicholas R. Jones, verified December 7, 1938; the exceptions of President & Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, and Carter, Ledyard & Milburn, its attorneys, dated December 27, 1938; the exceptions of Alfred T. Davison, dated December 15, 1938; the affidavit of Alfred T. Davison, verified December 27, 1938; the affidavit of Alfred T. Davison, verified December 28, 1938; the answer of Prudence-Bonds, Tenth Series Committee and Grosvenor Calkins, its attorney, verified December 29, 1938; the objections and exceptions of Prudence-Bonds Corporation (New Corporation), verified December 16, 1938, as amended by the affidavit of Thomas W. Streeter, verified December 30, 1938; the exceptions and objections of Alexander E. Klupt, verified December 27, 1938; the exceptions of Guaranty Trust Company of New York, as Trustee of Prudence-Bonds, Series A, filed December 27, 1938; the letter to the Court from George M. Jaffin & Leonard Klaber, dated December 30, 1938; the exceptions of The

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- 130 Chase National Bank of the City of New York, as Trustee of Prudence-Bonds, Fourteenth Series, and of its attorneys, Milbank, Tweed & Hope, dated December 27, 1938; the exceptions of City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh & Seventeenth Series, dated December 27, 1938; the exceptions and objections of Delafield, Marsh, Porter & Hope, dated December 27, 1938; the exceptions of McKercher & Link, filed December 8, 1938; the affidavit of George Link, Jr., verified December 23, 1938; the exceptions of John M. McGrath and William T. Cowin, as Trustees of The Prudence Company, Inc., Debtor, dated December 16, 1938; and the
- 131 letter to Prudence-Bonds Corporation (New Corporation) from Peabody, Arnold, Batchelder & Luther, attorneys for State Street Trust Company, as Trustee of Prudence-Bonds, Tenth Series, dated December 28, 1938, and after hearing the attorneys for various parties in interest in support of and in opposition to the confirmation of said Reports of Special Master James G. Moore, and in support of and in opposition to the various exceptions and objections filed in respect of said Reports, and upon the above mentioned orders of this Court and due deliberation having been had thereon, and upon filing the opinion of this Court, dated February 1, 1939, and this Court having therein determined in respect of all applications for allowances filed herein, that it deems it practicable to apply the provisions
- 132 of Chapter X, Article 13, of the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. Section 341 et seq) and having directed, that all orders for allowances for compensation and expenses pursuant to the said opinion of February 1, 1939, must be settled on due notice and presented for signature on or before February 17, 1939, and proposed orders having accordingly been submitted and notice for settlement by and on behalf of the Trustees of the Debtor and Geo. C. Wildermuth, Esq., their attorney; Frueauff,

Burns, O'Brien & Ruch, Esqs., the attorneys for the Debtor; Archibald Paimer, Esq., attorney for Mayer Committee; 133
 Samuel Silbiger, Esq., attorney for George E. Eddy; Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series; MacIntyre, McNally & Downey, Esqs., Special Counsel for said City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series; Tenth Series Committee and Grosvenor Calkins, Esq., its attorney; Sixteenth Series Committee and Rogers & Whitaker and Latson & Tambllyn, Esqs., its attorneys; Metz Committee and Rabenold, Scribner & Miller and Mark Hyman, Esqs., its attorneys; Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys; General Committee for Prudence Securities; 134
 Jacob A. Freedman, Esq., attorney for General Committee for Prudence Securities; Cullen Dykman, Edward Endelman and Jacob A. Freedman, Esqs., attorneys for General Committee for Prudence Securities; Edward Endelman, Esq., attorney for Committee of Preferred Stockholders of The Prudence Company, Inc.; Prudence Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, Esqs., its attorneys; and said fifteen (15) orders having been signed by this Court and no other proposed orders having been submitted and noticed for settlement pursuant to the direction of this Court, by the other applicants for allowances covered by said Reports of the Special Master, it is 135

ORDERED, ADJUDGED, DIRECTED, FOUND AND DECREED, as follows:

1. That the said Reports of Special Master James G. Moore, dated November 30, 1938 and December 12, 1938, and filed herein be and they hereby are, in all respects approved and confirmed and that the findings of fact and con-

136 clusions of law contained in said Reports, be and the same hereby are, made the findings of fact and conclusions of law of this Court, except as otherwise modified by this order and by the other said orders signed in respect of said Reports.

2. That all objections and exceptions to said Reports be and they hereby are, in all respects overruled and dismissed, except insofar as such objections and exceptions are sustained by this order and by the other said orders signed in respect of said Reports.

137 3. That the sum of \$2,500.00 be and hereby is fixed, awarded and granted as fair and reasonable compensation to Prudence Bondholders Protective Association, as and for all services rendered and all disbursements necessarily incurred by it in these proceedings, and that Prudence Bonds Corporation, the New Corporation, be and it hereby is, authorized and directed to pay to said Prudence Bondholders Protective Association, 41 days after the entry of this order, the said sum of \$2,500.00, out of the funds in its possession, pursuant to the order of this Court dated April 5, 1938, and made and entered in these proceedings.

138 4. That the sum of \$5,000.00, be and hereby is fixed, awarded and granted as fair and reasonable compensation to Messrs. Kadel, Sheils and Weiss, attorneys for Prudence Bondholders Protective Association, as and for all services rendered by them in these proceedings and that Prudence Bonds Corporation, the New Corporation, be and it hereby is, authorized and directed to pay to said Messrs. Kadel, Sheils & Weiss, 41 days after the entry of this order, the said sum of \$5,000.00, out of the funds in its possession, pursuant to the order of this Court, dated April 5, 1938, and made and entered in these proceedings.

5. That the sum of \$500.00, be and hereby is fixed, awarded and granted as fair and reasonable compensation

for services rendered and the sum of \$40.12 for disbursements necessarily incurred, by Messrs. Cummings & Lockwood, special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, and that Prudence-Bonds Corporation, the New Corporation, be and it hereby is authorized and directed to pay to said Messrs. Cummings & Lockwood, 41 days after the entry of this order, the said sum of \$540.12, out of the funds in its possession, pursuant to the order of this Court dated April 5, 1938, and made and entered in these proceedings. 139

6. That the sum of \$1,101.96, be and hereby is fixed, awarded and granted as fair and reasonable compensation to Empire Trust Company, as Depositary of the Debtor's issue of mortgage participation certificates known as the Seneca Issue, as and for all services rendered and disbursements necessarily incurred by it in such capacity in these proceedings, and that Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor herein, be and they hereby are authorized and directed to pay to said Empire Trust Company, 41 days after the entry of this order, the said sum of \$1,101.96, out of the fund in their possession, set aside and segregated as a fund to pay reorganization expenses applicable to the said Seneca Issue of mortgage participation certificates. 140

7. That the application of Alfred T. Davison, for an allowance herein, be and hereby is in all respects denied, except insofar as such application has been granted and the Report of Special Master Moore dated November 30, 1938, modified, by the order made and entered in these proceedings, dated December 23, 1938, authorizing and directing Prudence-Bonds Corporation, the New Corporation to pay to said Alfred T. Davison, the sum of \$714.50. 141

8. That the application of John M. McGrath and William T. Cowin, as Trustees of The Prudence Company, Inc.,

- 142 Debtor, be and the same hereby is in all respects denied; that the said Trustees of The Prudence Company, Inc., and each and all of the Corporate Trustees of the eighteen (18) Series of First Mortgage-Collateral Bonds, issued by the Debtor, and each of them, be and they hereby are, authorized and directed to turn over and deliver to Prudence-Bonds Corporation, the New Corporation, 41 days after the entry of this order, any and all funds in their possession or under their control and reserved or segregated on account of servicing fees or expenses claimed by said the Trustees of The Prudence Company, Inc. by their said application for an allowance herein, and that Prudence-Bonds Corporation, the New Corporation upon receipt of such moneys, be and it hereby is authorized and directed to deposit such funds to the credit of the income accounts of the appropriate respective Trust Funds securing the eighteen (18) Series of Bonds issued by the Debtor.
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9. That the applications of John M. A. Blair, Esq.; Lawrence R. Condon, Esq.; Alfred H. Cumbers, Esq.; Leon B. Ginsburg, Esq.; Herman Gottlieb, Esq.; Alfred E. Herz, Esq.; Hoffman & Hoffman, Esqs.; Charles L. Kingsley, Esq.; Alexander E. Klupt, Esq.; Leon London, Esq.; McKercher & Link, Esq.; Harry H. Oshrin, Esq. and Harold L. Winston, Esq., for allowances herein, be and they and each of them hereby are, in all respects denied and that the application of Edward Endelman, Esq., for an allowance as attorney for Protective Committee of Preferred Stockholders of The Prudence Company, Inc., be and hereby is in all respects denied, except insofar as said application has been granted by a separate order entered herein, re-
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lating solely to services of said applicant in connection with the Debtor's Seneca Issue of Mortgage Certificates.

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10. That the application filed herein by the Trustees of New York Investors, Inc., for an allowance for disbursements and the applications filed herein by the eleven (11) respective Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, except insofar as the application of Messrs. Delafield, Marsh, Porter & Hope, attorneys for City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, has been in part granted by an order made and entered herein, and the objections and exceptions filed herein in respect of such applications and the Reports of the Special Master pertaining thereto, be and they hereby are, held in abeyance for future consideration and determination in accordance with the opinion of this Court dated February 1, 1939.

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11. That this Court reserves and retains jurisdiction to give such further authorizations and directions as may be necessary to carry out this order and to make effective, consummate and carry out the Amended Plans of Reorganization approved and confirmed herein, and generally to determine any and all matters pertaining to these proceedings or to the Plans of Reorganization and not determined heretofore or by this order.

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ROBERT A. INCH

U. S. D. J., E. D. N. Y.

148 **Order denying motion of Prudence-Bonds Corporation for Reargument.**

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, on the 21 day of February, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

149

[CAPTION]

150

A motion by an order to show cause signed by the Hon. Robert A. Inch and dated February 6, 1939, upon the petition of Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in these proceedings, duly verified the 6th day of February, 1939, and upon all the papers filed and proceedings heretofore had herein, having duly come on to be heard before me on the 10th day of February, 1939, for an order herein, granting leave to said petitioner, Prudence-Bonds Corporation, for the reasons set forth in said petition, to reargue the application made herein for the consideration of the Reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, and for such other and further relief as may be proper in the premises;

Now, upon reading and filing the said order to show cause, with proof of due service thereof, upon the necessary

parties to this proceeding as required by said order to show cause, and upon reading and filing the said petition of Prudence-Bonds Corporation, the New Corporation, duly verified the 6th day of February, 1939, and the petition of Alfred E. Herz, verified the 9th day of February, 1939, in support of said motion and no papers being filed in opposition thereto, and after hearing Charles M. McCarty, attorney for Prudence-Bonds Corporation, the New Corporation; Larkin, Rathbone & Perry, Esqs. (Henry E. Kelley, Esq., of counsel) attorneys for Central Hanover Bank and Trust Company, as Trustee of Prudence-Bonds, Sixth and Eighteenth Series; Carter, Ledyard & Milburn, Esqs. (J. M. Richardson Lyeth, Esq., of counsel) attorneys for President & Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series; and Alfred E. Herz, Esq., attorney for Young Petofi Sick & Benevolent Society, a bondholder, all in support of said motion and no one having appeared in opposition thereto, and upon the Reports of Special Master James G. Moore, dated November 30, 1938 and December 12, 1938 and the exhibits and papers and the record of the proceedings had before said Special Master, in respect of said Reports and upon all the objections and exceptions and papers heretofore filed herein in connection with the application made herein for the consideration of said Reports and due deliberation having been had thereon and upon filing the opinion of the Court, it is

ORDERED, that the said motion be and the same hereby is denied.

ROBERT A. INCH,
U. S. D. J. E. D. N. Y.

- 154 Order to show cause of District Court on motion by R. F. C. for leave to appeal.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

Upon the annexed petition of RECONSTRUCTION FINANCE CORPORATION, duly verified the 10th day of March, 1939, and this court being fully advised, it is

- 155 ORDERED, that the Debtor, the Trustees of the Debtor, and all intervenors and applicants for allowances in the above entitled proceedings, or their respective attorneys appearing herein, show cause before the undersigned, at the Courthouse, Post-Office Building, Washington Street, Borough of Brooklyn, City and State of New York, on the 14 day of March, 1938, at two o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein granting leave to Reconstruction Finance Corporation, an intervenor herein, to take and prosecute appeals to the United States Circuit Court of Appeals for the Second Circuit, from any or all of the following orders of this Court in these proceedings:

- 156 (1) Order, dated February 14, 1939, whereby among other things, allowances in the aggregate sum of \$65,720.05 were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.
- (2) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07 were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner

& Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

157

(3) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96 were granted to Bondholders' Protective Committee, for Prudence Bonds, Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblin, Esqs., its attorneys herein, for services and disbursements.

(4) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

(5) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19 was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

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(6) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78 were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(7) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00 was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh, and Seventeenth Series, on account for services.

159

(8) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02 was granted to General Committee for Prudence Securities, for services and disbursements.

(9) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26 were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

160

(10) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee of Prudence Securities, for services.

(11) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1500.00 was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

(12) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1073.67 was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

161

(13) Order, dated February 21, 1939, whereby, among other things, (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7500.00 were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12 was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination.

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and why said Reconstruction Finance Corporation should not be granted such other and further relief as may be just and proper in the premises; AND sufficient cause appearing therefor, it is further

ORDERED, that service of this order and the petition upon which it is granted, by mailing copies thereof to the Debtor,

the Trustees of the Debtor and all intervenors and applicants for allowances in these proceedings, or to their respective attorneys or solicitors appearing herein, on this 10th day of March, 1939, at or before 11:50 P. M., shall be deemed good and sufficient service.

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Dated, New York, N. Y.

March 10, 1939

ROBERT A. INCH
U. S. D. J.

Petition of R. F. C. for leave to appeal.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

164

[CAPTION]

**PETITION OF RECONSTRUCTION FINANCE CORPORATION AN
INTERVENOR HEREIN, FOR LEAVE TO APPEAL**

*To the Honorable Judges of the District Court of the United
States for the Eastern District of New York:*

The petition of RECONSTRUCTION FINANCE CORPORATION respectfully shows as follows:

165

(1) The petitioner is a corporation duly organized and existing under and pursuant to an Act of Congress approved January 22, 1932, all of the stock of which is beneficially owned by the United States. It owns the entire outstanding stock of the Debtor herein, and has been duly authorized to intervene generally herein.

(2) Heretofore there was duly referred, for written report and recommendation, to James G. Moore, Esq., Special Master, by orders made and filed herein, the matter of

166 the persons and corporations to whom allowanees for services or expenses should be made under the plans of reorganization confirmed herein and the provisions of 77B of the Bankruptcy Act. Pursuant to such orders numerous applications for allowances for services and disbursements were filed with said Special Master and petitioner thereafter filed an answering affidavit and objections in opposition to the granting of substantially all of said applications for allowances, including those to whom allowances have since been granted as hereinafter mentioned.

167 (3) Thereupon and after due consideration of the applications and answers and other proofs filed in opposition to such applications, Special Master Moore filed herein an intermediate report dated November 30, 1938 wherein he recommended that allowances for services and disbursements be granted in the aggregate sum of \$462,014.08 to various applicants other than corporate trustees and their counsel and recommended that other applications be denied *in toto*. In such report, he further reserved for future determination the applications for allowances filed by the eleven corporate trustees of the outstanding eighteen series of the Debtor's bonds and their counsel. Subsequently, however, and by an additional report dated December 12, 1938 and duly filed herein, Special Master Moore recommended that allowances, for services and disbursements in the aggregate sum of \$626,862.41 be granted to such eleven corporate trustees and their counsel.

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(4) Both of said reports came on for consideration by this court at a hearing duly held on December 16, 1938, and petitioner by its counsel appeared in opposition to the confirmation or approval thereof.

(5) Thereafter and under date of February 1, 1939, Judge Inch, the District Judge, before whom these proceedings are pending and before whom the aforesaid hearing on the Special Master's abovementioned reports were held, filed an opinion approving with some modifications the Spe-

cial Master's Report of November 30, 1938; by said opinion he approved the Special Master's recommended allowances except that he increased the allowance to Samuel Silbiger, Esq., an attorney, from \$1,000 recommended by the Special Master, to \$5,000, and awarded allowances to certain other applicants whose petitions had been rejected by the Special Master. He also reserved for future consideration the application of the Trustees of New York Investors for reimbursement of \$50,954.64 expended by them under order of Judge Inch to defray various reorganization expenses. By his decision, Judge Inch also reserved for future determination, the allowances recommended by the Special Master in his report dated December 12, 1938, in the aggregate sum of \$626,862.41 for the above referred to eleven corporate trustees and counsel. Judge Inch also ruled that each party to whom an allowance had been awarded or denied, might submit a separate order covering the particular application involved but that there might be included in a single order such applications to to which the applicants involved did not submit separate orders by February 17, 1939. 169 170

(6) Separate orders were made and entered to carry out the aforesaid decision of Judge Inch, as follows:

(1) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05 were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements. 171

(2) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07 were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

(3) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00 were granted to Charles H. Kelby and

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Clifford S. Kelsey, as Trustee of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services.

(4) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96 were granted to Bondholders' Protective Committee, for Prudence-Bonds Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblin, Esqs., its attorneys herein, for services and disbursements.

(5) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

173

(6) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19 was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

(7) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78 were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

174

(8) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00 was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

(9) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02 was granted to General Committee for Prudence Securities, for services and disbursements.

(10) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26 were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

(11) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee of Prudence Securities, for services.

175

(12) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1500.00 was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

(13) Order, dated February 21, 1939, whereby among other things, an allowance in the sum of \$1073.67 was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

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(14) Order, dated February 21, 1939, whereby, among other things, (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7500.00 were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12 was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination.

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(7) Petitioner, feeling itself aggrieved by the aforesaid orders intends to appeal from each and every one of them. It is advised by counsel that there is some question whether an appeal by this petitioner from the orders granting and awarding allowances to others than the Trustees of the Debtor and their counsel requires the leave of this court.

178 Petitioner is advised that in a similar case, *In re New York Investors, Inc.*, 79 F. (2) 179, 182, the Circuit Court of Appeals for the Second Circuit, did not require that petitioner, who was an intervenor and creditor of the debtor involved in that case, obtain leave from the District Court to prosecute an appeal from an allowance to an applicant other than trustee of the debtor therein or their counsel. Petitioner is advised in that case the court said, with respect to its right to appeal without leave of this court, at p. 182;

“Where a court has thought best to allow a creditor to intervene and to be heard on certain specified matters, it does not seem unreasonable to grant him the right to appeal.”

179 In view of the fact that there may be doubt on the question whether or not leave of this court is required to permit petitioner to take and prosecute appeals from such of the aforesaid orders as award allowances to others than the trustees of the debtor and their counsel, petitioner is making this application to this court for an order granting it leave to take and prosecute such appeals.

180 (8) There are many reasons in petitioner's opinion why this application should be granted. Although applications for allowances for services and reimbursement of expenses in the grand total of \$2,885,574.54 were filed with the Special Master, the Trustees of the Debtor and their counsel took no action whatsoever to oppose the granting thereof. Petitioner, through its counsel, and the Prudence-Bonds Corporation (New Corporation), through its counsel, and the Trustees of the Prudence Company, Inc., through their counsel, alone filed affidavits or answers in opposition to the granting of said applications. Petitioner, through its special Representative and Counsel, has spent a very large amount of time in analyzing the applications for allowances filed and in preparing the affidavit of Jerome Thralls, duly sworn to August 20, 1938, which was duly filed on behalf of petitioner in opposition to said applications. As a result

of the opposition by the objectors, including petitioner, the amount recommended for allowance by the Special Master was in the reduced sum of \$1,088,876.49 as against \$2,885,574.54 applied for. Nevertheless, petitioner feels that the amounts awarded by the orders above referred to and the amounts recommended to the corporate trustees and their counsel, on which decision has been reserved, are unreasonable and excessive in the circumstances and should be further drastically reduced.

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(9) In stating above that the Trustees of the Debtor took no action on these allowances, no reflection is intended to be made on them because petitioner was informed at the time, that they took no action for the reason that they had already delivered instruments of transfer to the debtor's property to the New Corporation in accordance with the plan of reorganization confirmed herein and for the further reason that petitioner and the New Corporation had undertaken to analyze the applications and oppose any which seemed unjustified by the facts. Thus, by taking no action in opposing these allowances the Trustees of the Debtor avoided much duplication of effort.

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(10) The Trustees of the Debtor likewise took no action whatsoever on the hearing before the Court at which the aforesaid reports of the Special Master were considered. Petitioner and the Prudence-Bonds Corporation (New Corporation) appeared and filed exceptions and objections to the said reports and opposed confirmation thereof. Among the grounds of petitioner's objections to the approval of the said reports were that the Special Master erred in recommending allowances in the aggregate sum of \$1,088,876.49 for the reason that said sum is unreasonable and grossly excessive for the services and expenses of the applicants to whom said allowances were recommended, and that said sum cannot be justified by the benefits which bondholders had received or may expect to receive as the result of the reorganization herein. Petitioner further objected that if

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184 the allowances so recommended were approved, the total cost to bondholders of this reorganization would approximate \$1,500,000 for the reason that in addition to the amounts so recommended in said reports, \$350,651.79 had already been expended in this reorganization. The said amount included the following:

	Allowances to Special Master James G. Moore	\$73,100.00
	Interim allowances to 77B Trustees of the Debtor	40,000.00
	Interim allowance to attorney for 77B Trustees of the Debtor	50,000.00
185	Reorganization expenses paid by 77B Trustees of the Debtor out of Special Fund turned over to them pursuant to court orders	41,765.69
	New Corporation—on account of organization expenses	50,000.00
	Allowance to Special Master MacDonald	1,500.00
	Allowances to individual attorneys or firms for services in connection with specific items of collateral	37,659.94
186	Fees and expenses paid to corporate trustees or their attorneys out of the Trust Funds or from sources other than the Trust Funds, since inception of these proceedings	56,626.16
	Total	\$350,651.79

Petitioner also objected to the confirmation of said reports upon the grounds that no provision had yet been made for final allowance to Special Master Moore or for the payment of additional necessary initial expenses of the New Corporation, and that as shown by the facts set forth in its objections filed with the Special Master an over-all cost of not

more than $1\frac{3}{4}$ to 2% of the bonds reorganized could be justified and that in order to restrict the costs and expenses of this reorganization to an amount consistent with such charges in comparable reorganizations the total allowances to all applicants then before the court should not exceed \$750,000.

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(11) Petitioner believes that in addition to committing grievous error in awarding the amounts in the aforesaid fourteen (14) orders from which it desires to appeal, this Court further erred in finally fixing and directing the payment of any of such general allowances herein while at the same time reserving consideration of other applications in substantial amounts. Petitioner believes that before any allowances for general services in these proceedings can be made, the total cost of the reorganization should be fixed and is advised that this position is supported by the recent decision of the Circuit Court of Appeals for the Seventh Circuit in the case of *In re Irving Austin Building Corp.*, decided November 3, 1938 and reported in C. C. H. Bankruptcy Service, Section 51426. The total allowances recommended by the Special Master when added to the \$350,651.79 already granted in prior allowances, amount to almost \$1,500,000 as the cost of this reorganization. While the court has reserved decision on a large number of allowances, those already awarded are so excessive in amount as to indicate clearly that the total cost of this reorganization will be largely in excess of \$1,500,000 and unless the allowances which have already been awarded are drastically reduced in amount, it will be impossible for this reorganization to be consummated at a total cost which can be justified by the benefits which bondholders have received or may expect to receive as a result of the reorganization. Furthermore, unless such allowances are drastically reduced, the total cost of this reorganization will be entirely beyond the

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190 ability of the estate to pay, in addition to being entirely disproportionate to the benefits conferred.

(12) As indicated above, unless the amounts already awarded by the orders heretofore referred to are drastically reduced, the total cost of this reorganization will exceed \$1,500,000 and will be more than $2\frac{3}{4}\%$ of the original face amount of bonds outstanding and more than $7\frac{1}{2}\%$ of the market value, at the time the allowance applications were heard, of the bonds that have been reorganized in this proceeding. Such a cost would amount to almost a year's average income on the bonds reorganized herein, according to the estimates for 1936 given in the Special Master's report on file herein, on 13 individual series. These estimates of income range from a low of 1.051% for the 4th Series to a high of 4.813% for the 9th Series, or an average of 2.974%.* In addition, no principal payments have been made during this reorganization on seven of the eighteen series of bonds of the principal amount of \$23,534,500. In seven other series principal payments varied from \$20 to \$1 per \$1,000 bond. In only 4 series did the total of the principal payments exceed 10% and at the date of the confirmation of the plan herein, interest remained unpaid on the 10th Series from November 1, 1932; on the 4th Series from 1933; on four series from 1934; and on six series from 1935.

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*Estimated earnings for 1936 of thirteen series were:

Series	Percent	Series	Percent.
AA	2.117	11th	3.398
3rd	2.467	12th	3.845
4th	1.051	13th	3.199
5th	2.376	14th	3.453
7th	1.613	17th	3.848
8th	3.565	18th	2.563
9th	4.813		

(13) The following chart shows costs of certain comparable reorganizations:

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Reorganization	Size of Issue	Total fees and expenses allowed (1)	Ratio: Allowances to Debts re-organized
N. Y. Title Series F-1 (2)	\$27,899,156.67	\$115,788	.42%
Sherry Netherland (2 issues)	6,790,000.00	117,391	1.73
Ambassador (3) (2 issues and unsecured claims)	15,330,000 (bonds) 547,249.95 (unsecured)	263,814	1.66

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(1) Petitioner is informed that these aggregate figures include, except where otherwise indicated, the fees and expenses of indenture trustees and depositaries throughout the reorganization period.

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(2) The figures quoted do not include servicing fees, nor the fees of the depositary and its counsel.

(3) The figures quoted do not include the bonds on the corporation's Los Angeles property, or allowances made with respect to the reorganization of that property, since the Los Angeles property was the subject of a separate reorganization.

196

Reorganization	Size of Issue	Total fees and expenses allowed	Ratio: Allowances to Debts reorganized
Savoy Plaza	9,900,000 (bonds) 3,775,000 (ctfs) 9,799,191.67 (notes)	391,253	1.67%
Prudence Co. Inc.	13,800,000 ⁽¹⁾	270,237.67	1.96
1961 Bond Issue.			
United Railways & Electric Co. of Baltimore	11 Bond Issues 64,346,000 ⁽²⁾	591,534.86 ⁽³⁾	.93

197 (14) In view of the foregoing, petitioner deems it highly important in the public interest, as well as in the interest of the bondholders and others interested in the estate of the debtor that the allowances already awarded herein be passed upon and reduced by the Circuit Court of Appeals.

198 (15) Even if the court were to direct the Trustees of the Debtor to take appeals from the orders granting allowances to others than themselves and their counsel, petitioner believes that leave should in any event be granted to it to take and prosecute such appeals for the reason that in view of the fact that the Trustees of the Debtor in no way opposed the making of the allowances as recommended by the Special Master it is highly questionable as to whether or not they could now appeal. Petitioner is advised that the Circuit Court of Appeals in the Second Circuit has on other occasions refused to listen to a plea for reversal from a party

⁽¹⁾ The above represents the amount outstanding at the time the bonds went into default.

⁽²⁾ The amount of bonds thus outstanding at the commencement of the proceeding was reduced under the plan of reorganization to \$46,426,000. (See 15 F. Supp. 195, 11 F. Supp. 717). The amount allowed is 1.3% of the reduced amount.

⁽³⁾ This figure includes all interim allowances.

who had not objected below. *In re Prudence-Bonds Corporation*, 79 Fed. (2) 205, cert. den. 296 U. S. 672: *In re Inter-City Trust*, 295 Fed. 495, cert. den. 265 U. S. 589. In addition, the Trustees themselves, as well as their attorney, were applicants here for large allowances and have been awarded substantial amounts. They will be in the position of having to defend their own allowances in the appellate court. 199

(16) If under the law, therefore, the right to appeal from allowances to others than the Trustees or their counsel vests in the first instance in the Trustees of the Debtor, then deponent believes, in the circumstances of this case, the court should relieve the Trustees of the Debtor of any obligation in the premises and should grant the relief herein prayed for. 200

(17) Petitioner has a very substantial interest in this proceeding. The general plan of reorganization provides that stockholders and general creditors shall have the right to purchase shares in the New Corporation for a sum equivalent to the total costs and expenses of this reorganization. At the time these applications were pending, the petitioner was a pledgee with full power under the pledge agreement to protect its interest, of all the debtor's stock. Since that time, through permission granted by this court, the pledged stock was duly sold and petitioner purchased the same at such sale and is now the sole and complete owner thereof. Petitioner also holds an unsecured claim against the Prudence Company, Inc., guarantor of the Debtor's bonds, in the approximate sum of \$11,800,000. The Prudence Company, Inc. holds \$1,910,300 principal amount of subordinate bonds of the Debtor. Its affiliated interests hold additional bonds in the face amount of approximately \$2,700,000, including \$1,300,000 held by Realty Associates, Inc. and Realty Associates Securities Corporation. At the time of the hearing on these allowance applications all of the capital stock of these two corporations was held by petitioner 201

202 as collateral for petitioner's plan to the Prudence Company, Inc. and the guaranty thereof by New York Investors, Inc. Since that time petitioner has acquired full title to the stock of Realty Associates, Inc. but still holds the stock of Realty Associates Securities Corporation as such pledgee.

(18) Petitioner therefore asks that it be granted leave to take and prosecute appeals from all of the aforesaid orders awarding allowances for services and compensation for disbursements to persons or parties other than the Trustees of the Debtor and its counsel, as to which petitioner is advised there is no question of the necessity for obtaining leave of this court.

203 (19) That the reason why an order to show cause is requested herein is that petitioner is advised it is necessary to have this application brought on prior to the expiration of thirty days from the date of the entry of any order from which it is desired to appeal. At least one of said orders, to wit, the order dated February 14, 1939 whereby among other things, allowances in the sum of \$65,720.05 were granted to Prudence Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, Esqs., its counsel, was entered on February 14, 1939 and notice of entry served within five days thereafter on petitioner. Therefore, petitioner desires to have this application heard prior to March 16, 1939, which is the date of the expiration of thirty days from said February 14, 1939.

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(20) No previous application has been made to any court or judge for the relief herein requested.

Wherefore, petitioner respectfully prays that an order in the form submitted herewith be made herein requiring the debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the above entitled proceeding or their respective attorneys appearing herein, to show cause at a time and place to be fixed in said order, why leave should not be granted to it to appeal from the orders of the

District Court hereinabove referred to, and why petitioner should not be granted such other and further relief as may be just and proper in the premises. 205

Dated: New York, March 10, 1939

RECONSTRUCTION FINANCE CORPORATION

By JEROME THRALLS

Special Representative

JAMES F. DEALY

Attorney for Reconstruction
Finance Corporation

30 Broad Street,
Borough of Manhattan,
New York, N. Y. 206

[Verified March 10, 1939.]

Order to show cause of District Court on motion by Prudence-Bonds Corporation for leave to appeal.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

207

Upon the annexed petition of Prudence-Bonds Corporation, the New Corporation formed pursuant to the Plans of Reorganization approved and confirmed in the above entitled proceedings, duly verified the 10th day of March, 1939, and upon all the papers filed and proceedings heretofore had herein,

Let the Debtor and all intervenors, applicants for allowances herein and persons interested in the above entitled proceedings as creditors or stockholders of the Debtor here-

208 in or otherwise, or their respective attorneys appearing herein, show cause before me at a Stated Term of this Court, to be held in Room 312, at the United States Court House, at the corner of Washington and Johnson Streets, in the Borough of Brooklyn, City and State of New York, on the 14 day of March, 1939, at two o'clock in the afternoon of said day, or as soon thereafter as counsel can be heard; why an order should not be made and entered herein, granting leave to your petitioner to appeal from the orders described in paragraph "28" of said petition and for such other and further relief as may be just and proper in the premises.

209 Sufficient cause appearing therefor, LET service of this order and the petition upon which it was granted, by service of copies thereof, personally or by mail, upon the Debtor, the Trustees of the Debtor, and all intervenors and applicants for allowances herein, or upon their respective attorneys appearing herein, on or before the 10th day of March, 1939, be deemed sufficient service upon and notice of this application.

Dated: Brooklyn, N. Y., March 10, 1939.

ROBERT A. INCH,
U. S. D. J. E. D. N. Y.

Petition of Prudence-Bonds Corporation for leave to appeal.

210

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

To the Honorable the Judges of the United States District Court for the Eastern District of New York:

The petition of Prudence-Bonds Corporation, respectfully shows:

1. That your petitioner is a domestic corporation duly organized under the Stock Corporation Law and Section 9(b) of the General Corporation Law of the State of New York, and is the New Corporation formed pursuant to the Amended Plans of Reorganization, approved and confirmed in the above entitled proceedings. 211

2. Upon information and belief, that on June 29, 1934, the Debtor filed its petition for reorganization under Section 77B of the Bankruptcy Act; that by order made and entered herein on the same day said petition was approved as properly filed and Charles H. Kelby and Clifford S. Kelsey were appointed Temporary Trustees of the Debtor; that by order made and entered herein on July 31, 1934, the appointment of said Trustees was made Permanent and that said Trustees duly qualified and are still acting in that capacity. 212

3. Upon information and belief, that at the time of filing its petition for reorganization, the Debtor had outstanding eighteen (18) separate Series of First Mortgage-Collateral Bonds, payable to the bearer or registered holder thereof, aggregating in principal amount the sum of approximately \$56,000,000.00; that each of said Series of Bonds was secured by a Trust Agreement made between the Debtor and a Bank or Trust Company, under which mortgages and mortgage bonds and other securities were pledged by the Debtor for the equal and pro rata benefit and security of the holders of said bonds, which securities constitute the collateral underlying said Series of Bonds, and that the names of the Corporate Trustees or Successor Corporate Trustees at the time said proceedings were instituted and the respective dates of said Trust Agreements are as follows: 213

214	<i>Series</i>	<i>Trust Agreement dated</i>		<i>Corporate Trustee</i>
	A	January	15, 1920	Guaranty Trust Company of New York
	AA	August	1, 1922	City Bank Farmers Trust Company
	Third.	October	1, 1924	City Bank Farmers Trust Company
	Fourth	October	15, 1924	City Bank Farmers Trust Company
	Fifth	April	1, 1925	President & Directors of The Manhattan Company
	Sixth	July	1, 1925	Central Hanover Bank and Trust Company
215	Seventh	October	1, 1925	City Bank Farmers Trust Company
	Eighth	March	1, 1927	Brooklyn Trust Company
	Ninth	March	1, 1927	President & Directors of The Manhattan Company
	Tenth	May	1, 1927	State Street Trust Company
	Eleventh	December	1, 1927	Chicago Title & Trust Company
	Twelfth	February	1, 1928	Manufacturers Trust Company
	Thirteenth	June	1, 1928	Manufacturers Trust Company
216	Fourteenth	September	15, 1928	The Chase National Bank of The City of New York
	Fifteenth	October	1, 1928	Chemical Bank & Trust Company
	Sixteenth	February	1, 1929	The Marine Midland Trust Company of New York
	Seventeenth	August	1, 1929	City Bank Farmers Trust Company
	Eighteenth	February	2, 1931	Central Hanover Bank and Trust Company

4. Upon information and belief, that at the time of filing its petition for reorganization, the Debtor also had outstanding an issue of Mortgage Participation Certificates known as the Seneca Issue. 217

5. Upon information and belief, that the outstanding bonds of said eighteen (18) Series of Bonds, are held by approximately 35,000 bondholders residing in the State of New York, and elsewhere in many parts of the United States and in foreign countries.

6. Upon information and belief, that by order made and entered herein on March 11, 1936, an Amended Plan of Reorganization for the Debtor's Seneca Issue of Mortgage Participation Certificates was approved and confirmed. 218

7. Upon information and belief, that by order made and entered herein on May 6, 1936, an Amended Plan of Reorganization for Prudence Bonds, Fifteenth Series was approved and confirmed.

8. Upon information and belief, that by order made and entered herein on April 27, 1937, this Court found, that the Debtor herein was insolvent and that in respect of each of the eighteen (18) Series of Bonds, the fair value of the collateral pledged to secure each Series is less than the principal amount of the outstanding bonds and accrued unpaid interest thereon and that the Debtor, its stockholders and general creditors have no equity in the pledged collateral in any Series of Bonds. 219

9. Upon information and belief, that by eighteen (18) orders made and entered herein, on January 18, 1938, Amended Plans of Reorganization for Prudence Bonds, Series A, Series AA, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Sixteenth, Seventeenth and Eighteenth Series and a so-called Amended General Plan of Reorganization, were each approved and confirmed.

220 10. Upon information and belief, that the so-called Amended General Plan of Reorganization, provides for the formation of a New Corporation in accordance with Section 9(b) of the General Corporation Law of the State of New York; that all of the capital stock of such New Corporation shall be deposited under and subject to a Voting Trust Agreement; that the Voting Trustees shall be appointed by this Court and for the distribution of all Voting Trust Certificates or Voting Trust Scrip, pro rata, to the holders of bonds of the eighteen (18) Series of Bonds issued by the Debtor.

221 11. Upon information and belief, that in accordance with the Amended Plans of Reorganization approved and confirmed as aforesaid, your petitioner, the New Corporation provided for by the so-called Amended General Plan of Reorganization was organized under the Stock Corporation Law and Section 9(b) of the General Corporation Law of the State of New York and that its certificate of incorporation approved by this Court, was filed in the office of the Secretary of State, Albany, N. Y., on February 4, 1938.

222 12. Upon information and belief, that pursuant to the above mentioned orders, dated March 11, 1936, May 6, 1936 and January 18, 1938, the supervision of the consummation of said Amended Plans of Reorganization and the formation of the New Corporation to be organized pursuant thereto, was referred to James G. Moore, Esq., as Special Master, to hear and report with his opinion thereon.

13. Upon information and belief, that Special Master James G. Moore, filed herein an Intermediate Report, dated March 11, 1938, wherein he recommended that the Effective Date of the Amended Plans of Reorganization be fixed as March 1, 1938, and also reported upon the status of the bonds of each Series, cash on hand in the various Trust Funds, the amount to be set aside for fees and expenses in connection with these proceedings and the amounts to be

paid to bondholders as of the Effective Date of the said Plans. Said Report is hereby made a part hereof.

223

14. Upon information and belief, that by order made and entered herein on April 5, 1938, the said Intermediate Report of the Special Master, dated March 11, 1938, was approved and confirmed and funds reserved to pay reorganization expenses or allowances were directed to be turned over to your petitioner.

15. Upon information and belief, that by order made and entered herein on April 27, 1938, the Debtor and its Reorganization Trustees were authorized and directed to assign, transfer and convey to your petitioner, all of their right, title and interest in and to all the real and personal property, comprising or assigned, deposited or pledged to secure each and all of the eighteen (18) Series of Bonds issued by the Debtor and the Seneca Issue of Mortgage Participation Certificates of the Debtor, and that instruments of conveyance and assignment covering said property, have been executed and acknowledged by the Debtor and its Reorganization Trustees and delivered to your petitioner as of March 1, 1938.

224

16. Upon information and belief, that the collateral underlying the eighteen (18) Series of Bonds issued by the Debtor, which collateral is now owned by your petitioner subject to the lien of Supplemental Trust Agreements approved by the District Court, includes among other property, bonds of various Series of said eighteen (18) Series of Bonds, in the original face principal amount of approximately \$1,600,000.00.

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17. Upon information and belief, that by the above mentioned orders, dated March 11, 1936, May 6, 1936, the eighteen orders dated January 18, 1938, and also by orders made and entered herein on July 21, 1937, June 3, 1938 and June 6, 1938, there was referred to James G. Moore, Esq., as Special Master, the consideration of the persons or cor-

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porations to whom allowances for services or expenses should be made under the Plans of Reorganization confirmed herein and the provisions of Section 77B of the Bankruptcy Act, for written report and recommendation with his opinion thereon; that thereafter, approximately sixty-one (61) applications for allowances for services and disbursements in the aggregate total sum of approximately \$2,887,000.00 were filed with, and hearings thereon held before, said Special Master.

227

18. Upon information and belief, that the only objections filed with the Special Master to the said applications for allowances were the objections of your petitioner, Reconstruction Finance Corporation and the Trustees of The Prudence Company, Inc., Debtor. The objections of your petitioner, verified August 22, 1938, which are on file herein, are hereby made a part hereof.

19. Upon information and belief, that the Trustees of the Debtor herein, did not oppose or file objections to said applications for allowances, for the reason that, prior to the filing of the applications for allowances they had executed and delivered the instruments of conveyance and assignment referred to above in paragraph "15" hereof and that the Reconstruction Finance Corporation and your petitioner had evidenced their intention of analyzing the applications for allowances and filing objections thereto.

228

20. Upon information and belief, that said Special Master filed herein an Intermediate Report, dated November 30, 1938, wherein he recommended that allowances, for services and disbursements, be granted, in the aggregate sum of \$462,014.08, to a number of the applicants for allowances, but reserved for future determination the applications for allowances filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective attorneys appearing in these reorganization proceedings. Said Report which is on file herein, is hereby made a part hereof.

21. Upon information and belief, that by a notice of motion, dated December 1, 1938, returnable December 9, 1938, Prudence Securities Advisory Group, an intervenor herein, made an application herein, for an order passing upon the said Intermediate Report of the Special Master, taking such action thereon as this Court might deem advisable and granting such other and further relief, as to this Court might seem just and proper. 229

22. Upon information and belief, that the said motion of Prudence Securities Advisory Group was adjourned from December 9, 1938 to December 16, 1938, so as to await the coming in of the Special Master's Report on the remaining applications for allowances then pending before him. 230

23. Upon information and belief, that thereafter, said Special Master filed herein an Intermediate Report, dated December 12, 1938, wherein he recommended that allowances, for services and disbursements in the aggregate sum of \$626,862.41, be granted to the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective attorneys appearing herein and gave written notice to the parties in interest, that said Report would be handed up to the District Judge in charge of these proceedings on December 16, 1938, for consideration in conjunction with his Report, dated November 30, 1938 and that a hearing upon said two (2) Reports was held before this Court on December 16, 1938. Said Report which is on file herein, is hereby made a part hereof. 231

24. Upon information and belief, that all allowances and expenses of these reorganization proceedings are payable out of cash in the Trust Funds securing the eighteen (18) Series of Bonds issued by the Debtor, except allowances granted in the total sum of \$15,000.00 for services and disbursements in connection with the Plan of Reorganization for the Debtor's Seneca Issue of Mortgage Participation Certificates.

232 25. That your petitioner filed objections and exceptions to the confirmation of the said Reports of the Special Master, dated November 30, 1938 and December 12, 1938, upon the ground, among others, that the total allowances recommended by the Special Master in his said Reports, in the aggregate sum of \$1,088,876.49, plus all prior allowances granted in these reorganization proceedings, was excessive and unreasonable and beyond the ability of the Estate to pay. The said objections and exceptions of your petitioner which are on file herein, are hereby made a part hereof.

233 26. Upon information and belief, that under date of February 1, 1939, Hon. Robert A. Inch, District Judge, handed down an opinion, ruling that the Special Master's Report of November 30, 1938, should be confirmed, granting allowances in the aggregate sum of \$19,500.00, in addition to the allowances recommended by the Special Master, in said Report, totalling the sum of \$411,059.44, and reserving for future determination the application for an allowance for disbursements of the sum of \$50,954.64, filed by the Trustees of New York Investors, Inc., which the Special Master in his Report, dated November 30, 1938, recommended be denied, and also reserving for future determination, the allowances recommended by the Special Master in his Report dated December 12, 1938, in the aggregate sum of \$626,862.41 for the above named eleven (11)
234 Corporate Trustees and their respective attorneys appearing herein.

27. Upon information and belief, that in said opinion dated February 1, 1939, this Court stated in part as follows:

"While this reorganization proceeding was commenced under Section 77B of the Bankruptcy Act (11 U. S. C. A., Section 207), the petition having been filed June 29, 1934, the new provisions of Chap. 10, Article 13, of the Chandler Act (11 U. S. C. A., Section 341 et seq.) can be applied as fairly and conveniently to these applications as they could be, had

the proceeding been started within three months of the effective date of the Act, to wit, June 22, 1938. I 235
consider it practicable therefore to apply them."

28. Upon information and belief, that the District Judge ruled, that each party to whom an allowance had been awarded or denied, might submit a separate order covering the particular application involved, but that there might be included in a single order, the matters not covered by separate orders submitted by February 17, 1938 and that thereafter, separate orders on allowances were submitted and made herein and entered in the office of the Clerk of this Court, as follows:

(a) Order, dated February 14, 1939, whereby, among other things; allowances in the aggregate sum of \$65,- 720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements. 236

(b) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,- 786.07, were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

(c) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services. 237

(d) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,- 201.96, were granted to Bondholders' Protective Committee, for Prudence-Bonds, Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblin, Esqs., its attorneys herein, for services and disbursements.

(e) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

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(f) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Power & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

(g) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

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(h) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

(i) Order, dated February 21, 1939, whereby among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements.

(j) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26, were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

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(k) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services.

(l) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00, was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

(m) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trus-

tee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

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(n) Order, dated February 21, 1939, whereby, among other things; (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12, was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance, for future determination.

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(o) Order, dated February 21, 1939, which denied the application of your petitioner, Prudence-Bonds Corporation (New Corporation), for a re-argument of the application for the consideration of the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938.

29. That your petitioner intends to appeal from the orders described in the preceding paragraph, and is advised by counsel, that in view of the provisions of the Chandler Act and the general orders in Bankruptcy, as amended effective February 13, 1939, and under all the facts and circumstances herein, petitioner may appeal from each and all of said orders as a matter of right without obtaining leave of this Court. Petitioner, however, is further advised by counsel, that some question might be raised that leave of this Court should have been obtained to perfect petitioner's right to appeal from the order granting allowances to others than the Trustees of the Debtor and their counsel. Your petitioner therefore makes this application for leave to take

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and prosecute such appeals, in order to avoid the possibility of substantial rights being defeated by a technicality.

30. That your petitioner verily believes, that under all the facts and circumstances herein, the granting of this application would be in the best interests of the bondholders and others interested in the Estate of the Debtor affected by said orders.

245

31. That the reason an order to show cause is requested, is that petitioner is advised, that the time to appeal from at least one of the above mentioned orders may expire on March 16, 1939; and your petitioner therefore desires to have this application heard prior to that time.

32. That no previous application has been made for the relief herein requested.

WHEREFORE, your petitioner respectfully prays, that an order be made and entered herein, granting leave to your petitioner to appeal from the orders described in paragraph "28" above; granting such other and further relief as may be proper in the premises and that an order to show cause in the form hereto annexed be granted.

Dated: New York, N. Y., March 10, 1938.

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PRUDENCE-BONDS CORPORATION,

By: THOMAS W. STREETER,
President.

[Verified March 10, 1939.]

Affidavit submitted on motions for leave to appeal.

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UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

CITY OF NEW YORK
COUNTY OF NEW YORK } ss.:
STATE OF NEW YORK }

CHARLES H. KELBY being duly sworn, deposes and says:

I am one of the Trustees of the Debtor in the above entitled matter.

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On the 7th day of June, 1938, on behalf of the Trustees and at their request, counsel for the Trustees made the following statement at a hearing on that day on the matter of allowances before the Special Master:

“ * * * it has been the position of the Trustees of Prudence-Bonds Corporation that they have now been superseded by the new corporation and for that reason they do not intend to file any objections * * * ”

No objection has ever been made to the position thus taken by the Trustees, nor has any request at any time been made by anyone upon the Trustees to object to the allowances or to file objections or exceptions to the Special Master's report or to take any appeal from the decree entered thereon.

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If the motion now before the Court is to be construed as such a request or demand that the Trustees appeal from the decree on allowances, the Trustees are willing to take the appeal, if the new company will indemnify the Trustees against all costs and expenses thereon or that the appeal

250 thus taken be prosecuted by the new company in the Trustees' names, or jointly with the Trustees.

In this connection, it would be proper to point out that there may be doubt that the Trustees are the proper parties in interest for the reason that, pursuant to an order of this Court dated April 27, 1938, the Trustees conveyed to the new corporation all their right, title and interest in and to all the real and personal property in all of the eighteen series of bonds and the Seneca certificate issue. By such conveyance, the new company is the successor of the Trustees to the reorganization fund in question or any surplus or balance thereof which fund was turned over to the new company pursuant to the order of this Court dated April 5, 1938, so that in the event that the Trustees appealed or joined in an appeal, the estate of the Debtor would in no sense be benefited.

CHARLES H. KELBY.

[Sworn to March 14, 1939.]

Order granting R. F. C. leave to appeal.

252 At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 15th day of March, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

Reconstruction Finance Corporation, an intervenor herein, having duly moved this Court by order to show cause dated March 10, 1939, for an order granting to it

leave to take and prosecute appeals to the United States Circuit Court of Appeals for the Second Circuit from any or all of the orders of this Court in these proceedings referred to in the said order to show cause and the petition of Reconstruction Finance Corporation duly verified March 10, 1939, upon which said order to show cause was based, and said application having duly come on to be heard before this Court on the 14th day of March, 1939, 253

Now, on reading and filing the aforesaid order to show cause dated March 10, 1939 and the petition of Reconstruction Finance Corporation, duly verified March 10, 1939, upon which the same was based, together with proof of the due service thereof in accordance with the provisions of said order to show cause, and after hearing James F. Dealy, Esq., counsel for said Reconstruction Finance Corporation and Charles M. McCarty, Esq., attorney for Prudence-Bonds Corporation (New Corporation), in support of said application and Almet R. Latson, Jr., in opposition thereto and upon reading and filing the affidavit of Charles H. Kelby duly verified the 14th day of March, 1939, and due deliberation having been had thereon, it is hereby 254

ORDERED, that the aforesaid application of Reconstruction Finance Corporation be and the same hereby is in all respects granted; and it is further

ORDERED, that Reconstruction Finance Corporation, an intervenor herein, be and it hereby is granted leave of this Court to take and prosecute appeals to the United States Circuit Court of Appeals for the Second Circuit from all or any part of any or all of the following orders of this Court in these proceedings: 255

(1) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05 were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.

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(2) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07 were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

(3) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00 were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services.

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(4) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96 were granted to Bondholders' Protective Committee, for Prudence-Bonds Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tambllyn, Esqs., its attorneys herein, for services and disbursements.

(5) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

(6) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19 was granted to Frueauff, Burns, O'Brien & Ruch, Esq., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

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(7) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78 were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(8) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00 was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

(9) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02 was granted to General Committee for Prudence Securities, for services and disbursements. 259

(10) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26 were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

(11) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services.

(12) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1500.00 was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services. 260

(13) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1073.67 was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee to Prudence-Bonds, Third and Seventh Series, for services and disbursements.

(14) Order, dated February 21, 1939, whereby among other things, (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7500.00 were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12 was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing 261

262 herein, for allowances for services and disbursements, were held in abeyance for future determination.

ROBERT A. INCH,
U. S. D. J.

Order granting Prudence-Bonds Corporation leave to appeal.

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

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A motion by an order to show cause, signed by the Hon. Robert A. Inch, and dated March 10, 1939, upon the petition of Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in these proceedings, duly verified the 10th day of March, 1939, and upon the papers filed and the proceedings heretofore had herein, having duly come on to be heard before me on the 14th day of March, 1939, for an order granting leave to petitioner to appeal from the orders described in paragraph "28" of said petition, and for such other and further relief as may be just and proper in the premises;

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Now, upon reading and filing the said order to show cause, with proof of due service thereof, upon the necessary parties to this proceeding as required by said order to show cause, and upon reading and filing the said petition of Prudence-Bonds Corporation, the New Corporation duly verified the 10th day of March, 1939, in support of said motion, and no papers being filed in opposition thereto, and after hearing CHARLES M. McCARTY, Esq., attorney for Prudence-Bonds Corporation, the New Corporation, and James F. Dealy, Esq., attorney for Reconstruction Finance Corpora-

tion, in support of said motion and Almet R. Latson, Jr., in opposition thereto, and upon reading and filing the affidavit of Charles H. Kelby, duly verified the 14th day of March, 1939, and upon all the papers filed and the proceedings heretofore had herein, and due deliberation having been had thereon, it is,

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ORDERED, that the said motion be and hereby is, in all respects granted; and it is further

ORDERED, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in these proceedings, be and it hereby is, granted leave to take and prosecute appeals to the United States Circuit Court of Appeals for the Second Circuit, from any and all of the following orders of this Court made and entered in these proceedings:

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(a) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.

(b) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07, were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

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(c) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services.

(d) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96, were granted to Bondholders' Protective Committee, for Prudence-Bonds, Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblin, Esqs., its attorneys herein, for services and disbursements.

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(e) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

(f) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

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(g) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(h) Order, dated February 21, 1939, whereby, among other things an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

(i) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements.

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(j) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26, were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney here, for services and disbursements.

(k) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services.

(l) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00, was

granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

271

(m) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

(n) Order, dated February 21, 1939, whereby, among other things; (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12, was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination.

272

(o) Order, dated February 21, 1939, which denied the application of Prudence-Bonds Corporation (New Corporation), for a re-argument of the application for the consideration of the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938.

273

Dated: Brooklyn, N. Y., March 15, 1939.

ROBERT A. INCH

U. S. D. J. E. D. N. Y.

274 Notice of appeal by R. F. C. from order awarding allowances
to Prudence Securities Advisory Group, et al.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

275 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

276 Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

277

PERCIVAL E. JACKSON &
CLINTON T. ROE, ESQS.,

Pro se and as attorneys for
Prudence Securities Advisory Group,
68 William Street,
New York, N. Y.

CHARLES M. McCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

278

GEORGE C. WILDERMETH, Esq.,
Pro se and as attorney for Trustees of
the Debtor,
188 Montague Street,
Brooklyn, New York.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

279

- 280 Notice of appeal by R. F. C. from order awarding allowance to Metz Committee, *et al.*

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

- 281 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07, were granted to Bondholders Reorganization Committee for Sixth and Twelfth Series, sometimes called, the "Metz Committee" and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

- 282 Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor

Office & P. O. Address
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

283

RABENOLD, SCRIBNER & MILLER,
Esqs., and MARK HYMAN, Esq.,
 Pro se and as attorneys for
 Bondholders Reorganization
 Committee for Sixth and Twelfth
 Series,
 20 Exchange Place,
 New York, N. Y.

CHARLES M. McCARTY, Esq.,
 Attorney for Prudence-Bonds Corporation
 100 East 42nd Street,
 New York, N. Y.

284

GEORGE C. WILDERMUTH, Esq.,
 Pro se and as attorney for the Trustees
 of the Debtor,
 188 Montague Street,
 Brooklyn, New York.

HON. PERCY G. B. GILKES,
 Clerk of United States District Court,
 Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in 285
 Clerk's Office U. S. District Court, E. D. N. Y., March 15,
 1939."

286

Notice of appeal by R. F. C. from order awarding allowances
to Trustees of Debtor *et al.*

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

287

PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor herein and Geo. C. Wildermuth, Esq., their attorney herein, for services, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

288

Dated, New York, N. Y.,
March 14, 1939:

Yours, etc.,

JAMES F. DEALY

Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor

Office & P. O. Address

No. 30 Broad Street,

Borough of Manhattan,

New York, N. Y.

To:

289

GEO. C. WILDERMUTH, Esq.,
Pro se and as attorney for Charles
H. Kelby and Clifford S. Kelsey, as
Trustees of Prudence-Bonds Corporation,
Debtor,
188 Montague Street,
Brooklyn, N. Y.

CHARLES M. MCCARTY, Esq.
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

290

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office, U. S. District Court, E. D. N. Y., March 15,
1939."

291

292 Notice of appeal by R. F. C. from order awarding allowances
to Sixteenth Series Committee, et al.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK

[CAPTION]

SIRS:

293 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96, were granted to Bondholders Protective Committee, for Prudence-Bond, Sixteenth Series and Rogers & Whitaker, Esqs., and Latson & Tamblyn, Esqs., its attorneys herein, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

294 Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

295

**ROGERS & WHITAKER, Esqs., and
LATSON & TAMBLYN, Esqs.,**

Pro se and as attorneys for Bond-
holders Protective Committee for
Prudence-Bonds, Sixteenth Series,
52 Wall Street,
New York, N. Y.

CHARLES M. McCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
160 East 42nd Street,
New York, N. Y.

296

GEORGE C. WILDERMUTH, Esq.,
Pro se, and as attorney for Trustees
of the Debtor,
188 Montague Street, Brooklyn,
New York

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office, U. S. District Court, E. D. N. Y., March 15, 1939." 297

298 **Notice of appeal by R. F. C. from order awarding allowance to Samuel Silbiger.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

SIRS:

299 **PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION; an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.**

Dated, New York, N. Y., March 14, 1939.

300

Yours, etc.,

**JAMES F. DEALY,
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.**

To:

301

SAMUEL SILBIGER, Esq.,
 Pro se,
 66 Court Street,
 Brooklyn, New York.

CHARLES M. McCARTY, Esq.,
 Attorney for Prudence-Bonds Corporation,
 100 East 42nd Street,
 New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,
 Pro se and as attorney for Charles H. Kelby and
 Clifford S. Kelsey, as Trustees of Prudence-Bonds
 Corporation, Debtor,
 188 Montague Street,
 Brooklyn, New York.

302

HON. PERCY G. B. GILKES,
 Clerk of United States District Court,
 Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
 Clerk's Office U. S. District Court E. D. N. Y. March 15,
 1939."

303

- 304 Notice of appeal by R. F. C. from order awarding allowance to attorneys for Debtor.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

- 305 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, as amended by order of said Court dated February 24, 1939, whereby, among other things, an allowance in the aggregate sum of \$71,623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., as attorneys for the Debtor herein, for services and disbursements, and that
- 306 said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof, except that portion of said order which relates to an allowance in the sum of \$9,000.00, payable by the Trustees of the Debtor out of funds in their hands for the payment of allowances and expenses in the reorganiza-

tion of the Seneca Issue of Mortgage Participation Certificates of the Debtor.

307

Dated, New York, N. Y., March 14, 1939.

Yours, etc.,

JAMES F. DEALY,
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

308

FRUEAUFF, BURNS, O'BRIEN & RUCH, Esqs.,
and POWELL & RUCH, Esqs.,
Sixty Wall Street,
New York, N. Y.

CHARLES M. MCCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq., Pro se and as
Attorney for Charles H. Kelby and Clifford S.
Kelsey, Trustees of Prudence-Bonds Corporation,
Debtor,
188 Montague Street,
Brooklyn, New York.

309

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is Stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

310 Notice of appeal by R. F. C. from order awarding allowances to Independent Committee, et al.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

311 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order; as well as from the whole thereof.

Dated, New York, N. Y. March 14, 1939.

312

Yours, etc.,

JAMES F. DEALY,
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

313

GEORGE M. JAFFIN and LEONARD KLABER, Esqs.,
Pro se and as attorneys for Independent
Prudence Bondholders Protective Committee,
285 Madison Avenue,
New York, N. Y.

CHARLES M. McCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,
Pro se and as attorney as Trustees of Prudence-
Bonds Corporation, Debtor,
188 Montague Street,
Brooklyn, New York.

314

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

315

316 Notice of appeal by R. F. C. from order awarding allowance to Delafield, Marsh, Porter & Hope.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

317 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

318 Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To: ..

319

DELAFIELD, MARSH, PORTER & HOPE, Esqs.,

Pro se,
20 Exchange Place,
New York, N. Y.

CHARLES M. McCARTY, Esq.,

Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,

Pro se and as attorney for Charles H. Kelby
and Clifford S. Kelsey, as Trustees of Pru-
dence-Bonds Corporation, Debtor,
188 Montague Street,
Brooklyn, New York.

320

HON. PERCY G. B. GILKES,

Clerk of the United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

321

322 Notice of appeal by R. F. C. from order awarding allowances
to Tenth Series Committee, et al.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

323 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26 were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

324 Dated, New York, N.Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

325

GROSVENOR CALKINS, Esq.,
Pro se and as attorney for
Tenth Series Committee,
53 State Street,
Boston, Mass.

CHARLES M. McCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,
Pro se and as attorney for Charles H. Kelby
and Clifford S. Kelsey, as Trustees of Pru-
dence-Bonds Corporation, Debtor,
188 Montague Street,
Brooklyn, New York.

326

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

327

328 Notice of appeal by R. F. C. from order awarding allowance
to General Committee for Prudence Securities.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

329 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

330

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

331

CULLEN & DYKMAN, EDWARD ENDELMAN and
JACOB A. FREEDMAN, ESQS.,

Attorneys for General Committee for
Prudence Securities,
215 Montague Street,
Brooklyn, New York.

CHARLES M. MCCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

332

GEORGE C. WILDERMUTH, Esq.,
Pro se and as attorney for Charles H. Kelby
and Clifford S. Kelsey, as Trustees of Pru-
dence-Bonds Corporation, Debtor,
188 Montague Street,
Brooklyn, New York.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939." 333

334 Notice of appeal by R. F. C. from order awarding allowance to Jacob A. Freedman.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

335 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services, and that such appeal is only from that part of said order which grants said allowance of \$5,000 to said Jacob A. Freedman, Esq.

Dated, New York, N. Y.,
March 14, 1939.

336

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor,
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

337

JACOB A. FREEDMAN, Esq.,
Pro se,
32 Court Street,
Brooklyn, New York.

CHARLES M. MCCARTY, Esq.,
Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,
Pro se and as attorney for
Charles H. Kelby and Clifford S. Kelsey,
as Trustees of Prudence-Bonds
Corporation, Debtor,
188 Montague Street,
Brooklyn, New York.

338

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

339

340 Notice of appeal by R. F. C. from order awarding allowance to Archibald Palmer.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

341

PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00 was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

Dated, New York, N. Y.,
March 14, 1939

342

Yours, etc.,

JAMES F. DEALY

Attorney for RECONSTRUCTION FINANCE CORPORATION, Intervenor,
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

To:

343

ARCHIBALD PALMER, Esq.,

Pro se,
2 Lafayette Street,
New York, N. Y.

CHARLES M. MCCARTY, Esq.,

Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,

Pro se and as attorney for Charles H. Kelby
and Clifford S. Kelsey, as Trustees of
Prudence-Bonds Corporation,
Debtor,
188 Montague Street,
Brooklyn, New York.

344

HON. PERCY G. B. GILKES,

Clerk of the United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

345

346 Notice of appeal by R. F. C. from order awarding allowance
to MacIntyre, McNally & Downey.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

347 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above-entitled proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to MacIntyre, McNally & Downey, Esqs., Special Counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements, and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order, as well as from the whole thereof.

348 Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor,
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y..

To:

349

MACINTYRE, McNALLY & DOWNEY, Esqs.,

Pro se,
32 Broadway,
New York, N. Y.

CHARLES M. McCARTY, Esq.,

Attorney for Prudence-Bonds Corporation,
100 East 42nd Street,
New York, N. Y.

GEORGE C. WILDERMUTH, Esq.,

Pro se and as attorney for Charles H. Kelby
and Clifford S. Kelsey, as Trustees of
Prudence-Bonds Corporation,
Debtor,
188 Montague Street,
Brooklyn, New York.

350

HON. PERCY G. B. GILKES,

Clerk of United States District Court,
Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

351

352 Notice of appeal by R. F. C. from parts of order of Feb. 21, 1939 awarding allowances to Prudence Bondholders Protective Assn., et al. and denying other allowances.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

353 PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from the portions designated and included in paragraphs numbered "(1)" to "(5)" inclusive, and in paragraph numbered "(10)", of an order of this Court made in the above-entitled proceedings by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby among other things: (a) the Reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (b) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (c) an allowance of the sum of \$540.12, was granted to Cummings & Lockwood, Esqs., Special Counsel for Manufacturers Trust Company, as Trustee of Prudence Bonds Twelfth Series, for services and disbursements, and (d) the application filed herein by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed herein by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and dis-

354

bursements, were held in abeyance for future determination.

355

Dated, New York, N. Y.,
March 14, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for RECONSTRUCTION FINANCE
CORPORATION, Intervenor
Office & P. O. Address,
No. 30 Broad Street,
Borough of Manhattan,
New York, N. Y.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939."

356

Notice of appeal by Prudence Bonds Corporation from order
awarding allowances to Prudence Securities
Advisory Group, et al.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

357

Sirs:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the

358 office of the Clerk of this Court on February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements, and that said Prudence Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.

Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY

Attorney for Prudence Bonds Corporation (New Corporation)

Office & P. O. Address,

No. 100 E. 42nd Street,

Borough of Manhattan,

New York, N. Y.

359

To:

PERCIVAL E. JACKSON &

CLINTON T. ROE, Esqs.,

Pro Se and as attorneys for

Prudence Securities Advisory Group,

68 William Street,

New York, N. Y.

360

HON. PERCY G. B. GILKES,

Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,

Attorney for the Trustees of the Debtor,

188 Montague Street,

Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939."

Notice of appeal by Prudence-Bonds Corporation from order
awarding allowances to Metz Committee, et al.

361

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 14, 1939, whereby among other things, allowances in the aggregate sum of \$43,786.07, were granted to Bondholders Reorganization Committee for Sixth and Twelfth Series, sometimes called, the "Metz Committee" and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.

362

363

Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY

Attorney for Prudence-Bonds
Corporation (New Corporation)
Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

364 To:

RABENOLD, SCRIBNER &
MILLER, Esqs., and
MARK HYMAN, Esq.,
Pro-se and as attorneys for
Bondholders Reorganization
Committee for Sixth &
Twelfth Series,
20 Exchange Place,
New York, N. Y.

365

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15,
1939."

366

Notice of appeal by Prudence-Bonds Corporation from order
awarding allowances to Trustees of the Debtor
and their attorney.

367

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor herein and Geo. C. Wildermuth, Esq., their attorney herein, for services; and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.

368

369

Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

E. STANLEY MARKS,
Attorney for Prudence-Bonds Corporation (New Corporation)
Office & P. O. Address,
111 Duane Street,
New York, N. Y.

370 To:

GEO. C. WILDERMUTH, Esq.,
Pro Se and as attorney for
Charles H. Kelby and
Clifford S. Kelsey, as Trustees
of Prudence-Bonds
Corporation, Debtor,
188 Montague Street,
Brooklyn, N. Y.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

371

The foregoing Notice of Appeal is stamped "Filed in Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939."

Notice of appeal by Prudence-Bonds Corporation from order
awarding allowances to Sixteenth Series
Committee, et al.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

372

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the

office of the Clerk of this Court on February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96, were granted to Bondholders Protective Committee, for Prudence-Bonds, Sixteenth Series and Rogers & Whitaker, Esqs., and Latson & Tamblyn, Esqs., its attorneys herein, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts. 373

Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation) 374
Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

To:

ROGERS & WHITAKER, Esqs.,
and LATSON & TAMBLYN, Esqs.,
Pro Se and as attorneys for
Prudence-Bonds, Sixteenth Series
52 Wall Street,
New York, N. Y.

HON. PERCY G. B. GILKES, 375
Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939."

376 Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to Samuel Silbiger.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

377 PLEASE TAKE NOTICE, that Prudence-Bonds Corporation,
the New Corporation formed pursuant to the Amended
Plans of Reorganization approved and confirmed in the
above entitled proceedings, hereby appeals to the United
States Circuit Court of Appeals, for the Second Circuit,
from an order of this Court made in said proceedings, by
the Hon. Robert A. Inch, District Judge, and entered in
the office of the Clerk of this Court on February 16, 1939,
whereby, among other things, an allowance in the sum of
\$5,000.00, was granted to Samuel Silbiger, Esq., attorney
for George E. Eddy, for services, and that said Prudence-
Bonds Corporation, hereby appeals from each and every
part of said order, as well as from the whole thereof, both
on the law and on the facts.

378 Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY.

Attorney for Prudence-Bonds Corporation
(New Corporation)

Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

To:

SAMUEL SILBINGER, Esq., Pro Se,
66 Court Street,
Brooklyn, N. Y.

379

HON. PERCY G. B. GILKES,
Clerk of United States District Court
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939." 380

**Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to attorneys for Debtor.**

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

381

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, as amended by order dated February 24, 1939, whereby, among other things, an allowance in the aggregate sum of \$71,-

382 623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., as attorneys for the Debtor herein, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts, except that portion of said order which relates to an allowance in the sum of \$9,000.00, payable by the Trustees of the Debtor out of funds in their hands for the payment of allowances and expenses in the reorganization of the Seneca Issue of Mortgage Participation Certificates of the Debtor.

Dated: New York, N. Y., March 14, 1939.

383

Yours, etc.,

E. STANLEY MARKS,
Attorney for Prudence-Bonds Corporation
(New Corporation)

Office & P. O. Address

111 Duane Street,
Borough of Manhattan,
New York, N. Y.

To:

FRUEAUFF, BURNS, O'BRIEN & RUCH, ESQS.,
and POWELL & RUCH, ESQS., Pro Se,
Sixty Wall Street,
New York, N. Y.

384

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, ESQ.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in Clerk's Office U. S. District Court, E. D. N. Y., March 15, 1939."

Notice of appeal by Prudence-Bonds Corporation from order
awarding allowances to Independent Committee, et al. 385

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts. 386

Dated: New York, N. Y., March 14, 1939. 387

Yours, etc.,

CHARLES M. MCCARTY,
Attorney for Prudence-Bonds Corporation
(New Corporation)

Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

388 To:

GEORGE M. JAFFIN and LEONARD KLABER, ESQS.,
Pro Se and as attorneys for Independent Prudence
Bondholders Protective Committee,
285 Madison Avenue,
New York, N. Y.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

389 GEO. C. WILDERMUTH, ESQ.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office, U. S. District Court, E. D. N. Y., March 15,
1939."

Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to Delafield, Marsh, Porter
& Hope.

390

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation,
the New Corporation formed pursuant to the Amended
Plans of Reorganization approved and confirmed in the
above entitled proceedings, hereby appeals to the United

States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts. 391

Dated: New York, N. Y., March 14, 1939.

Yours, etc., 392

CHARLES M. McCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation)
Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

To:

DELAFIELD, MARSH, PORTER &
HOPE, Esqs., Pro se,
20 Exchange Place,
New York, N. Y.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York. 393

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in Clerk's office U. S. District Court E. D. N. Y. March 15, 1939."

- 394 **Notice of appeal by Prudence-Bonds Corporation from order awarding allowances to Tenth Series Committee, et al.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

SIRS:

- 395 **PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26, were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.**

- 396 **Dated: New York, N. Y., March 14, 1939.**

Yours, etc.,

**CHARLES M. McCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation)**

**Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.**

To:

GROSVENOR CALKINS, Esq.,
Pro Se and as attorney for
Tenth Series Committee,
53 State Street,
Boston, Mass.

397

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

398

The foregoing Notice of Appeal is stamped "Filed in
Clerk's office U. S. District Court E. D. N. Y. March 15,
1939."

Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to General Committee for
Prudence Securities.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

399

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation,
the New Corporation formed pursuant to the Amended
Plans of Reorganization approved and confirmed in the
above entitled proceedings, hereby appeals to the United
States Circuit Court of Appeals, for the Second Circuit,
from an order of this Court made in said proceedings, by
the Hon. Robert A. Inch, District Judge, and entered in the

400 office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.

Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation)

401

Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

To:

CULLEN & DYKMAN, EDWARD
ENDELMAN and JACOB A.
FREEDMAN, Esqs.,

Attorneys for General Committee for
Prudence Securities.

402

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in Clerk's office U. S. District Court E. D. N. Y. March 15, 1939."

**Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to Jacob A. Freedman.** 403

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

**PLEASE TAKE NOTICE, that Prudence-Bonds Corporation,
the New Corporation formed pursuant to the Amended
Plans of Reorganization approved and confirmed in the
above entitled proceedings, hereby appeals to the United
States Circuit Court of Appeals, for the Second Circuit,
both on the law and on the facts, from an order of this
Court made in said proceedings, by the Hon. Robert A. Inch,
District Judge, and entered in the office of the Clerk of this
Court on February 21, 1939, whereby, among other things,
an allowance in the sum of \$5,000.00, was granted to Jacob
A. Freedman, Esq., as associate counsel for General Com-
mittee for Prudence Securities, for services, and that such
appeal is only from that part of said order which grants
said allowance of \$5,000.00 to said Jacob A. Freedman, Esq.** 404

Dated: New York, N. Y., March 14, 1939.

Yours, etc., 405

CHARLES M. McCARTY

**Attorney for Prudence-Bonds Corporation
(New Corporation)**

**Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.**

406 To:

JACOB A. FREEDMAN, Esq.,
Pro. se,
32 Court Street,
Brooklyn, N. Y.

HON. PERCY G. B. GILKES,
Clerk of the United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

407 The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office, U. S. District Court, E. D. N. Y., March 15,
1939."

**Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to Archibald Palmer.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

408

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939,

whereby, among other things, an allowance in the sum of \$1,500.00 was granted to Archibald Palmer, Esq., attorney 409 for the Mayer Committee, for services, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.

Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY,
Attorney for Prudence-Bonds Corporation
(New Corporation)

Office & P. O. Address, 410
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

To:

ARCHIBALD PALMER, Esq.,
Pro se,
2 Lafayette Street,
New York, N. Y.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York. 411

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 15, 1939."

412 Notice of appeal by Prudence-Bonds Corporation from order
awarding allowance to MacIntyre, McNally & Downey.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

413 PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to Mac Intyre, Mc Nally & Downey, Esqs., Special Counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and on the facts.

414 Dated: New York, N. Y., March 14, 1939.

Yours, etc.,

CHARLES M. McCARTY,
Attorney for Prudence-Bonds Corporation
(New Corporation)

Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

To:

415

MACINTYRE, McNALLY and
DOWNEY, Esqs., Pro Se,
32 Broadway,
New York, N. Y.

HON. PERCY G. B. GILKES,
Clerk of United States District Court,
Eastern District of New York.

GEO. C. WILDERMUTH, Esq.,
Attorney for the Trustees of the Debtor,
188 Montague Street,
Brooklyn, N. Y.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office, U. S. District Court, E. D. N. Y., March 15,
1939."

416

**Notice of appeal by Prudence-Bonds Corporation from order
of Feb. 21, 1939 awarding allowances to various
applicants.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

417

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation,
the New Corporation formed pursuant to the Amended
Plans of Reorganization approved and confirmed in the
above entitled proceedings, hereby appeals to the United
States Circuit Court of Appeals, for the Second Circuit,
from an order of this Court made in said proceedings
by the Hon. Robert. A. Inch, District Judge, and en-

418 tered in the office of the Clerk of this Court on February 21, 1939, whereby, among other things; (a) the Reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (b) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (c) an allowance of the sum of \$540.12, was granted to Cummings & Lockwood, Esqs., Special Counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, for services and disbursements, and (d) the application filed herein by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed herein by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance, for future determination, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in the paragraphs thereof, designated "6" "7" "8" "9" and "11".

419

Dated: New York, N. Y., March 14, 1939.

420

Yours, etc.,

CHARLES M. McCARTY,
Attorney for Prudence-Bonds Corporation
(New Corporation)

Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 15, 1939."

**Notice of appeal by Prudence-Bonds Corporation from
Order Denying Reargument.**

421

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings, by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21, 1939, which denied the application of said Prudence-Bonds Corporation for a re-argument of the application made herein for the consideration of the Reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order, as well as from the whole thereof.

422

Dated: New York, N. Y.,
March 14, 1939.

Yours, etc.,

423

**CHARLES M. McCARTY,
Attorney for Prudence-Bonds Corporation
(New Corporation)**

**Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.**

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 15, 1939."

424

Notice of appeal by Harry H. Oshrin.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

425 .. PLEASE TAKE NOTICE, that HARRY H. OSHRIN hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from an order of this Court made in the within proceedings by Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21st, 1939, insofar as the same approved the report of Special Master James G. Moore, dated November 30, 1938, disallowing the petition of HARRY H. OSHRIN for an allowance herein, both on the law and on the facts applicable to the said HARRY H. OSHRIN's application for allowance.

Dated, March 16th, 1939.

426

Yours, etc.,

HERMAN G. ROBBINS,
Attorney for Harry H. Oshrin,
Office & P. O. Address,
66 Court Street,
Borough of Brooklyn,
City of New York.

To:

427

CHARLES M. McCARTY, Esq.,
 Attorney for Prudence-Bonds
 Corporation (New Corporation)
 100 East 42nd Street,
 New York, N. Y.

JAMES F. DEALY, Esq.,
 Attorney for Reconstruction Finance
 Corporation,
 30 Broad Street,
 New York, N. Y.

The foregoing Notice of Appeal is stamped "Filed in
 Clerk's Office, U. S. District Court, March 21, 1939."

428

**Notice of appeal by President and Directors of the Man-
 hattan Company and Carter, Ledyard & Milburn.**

**UNITED STATES DISTRICT COURT,
 EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

429

SIRS:

**PLEASE TAKE NOTICE, that President and Directors of the
 Manhattan Company, as Trustee under two certain Trust
 Agreements made by Prudence-Bonds Corporation, one
 dated April 1, 1925 and the other dated March 1, 1927, pro-
 viding for the issue and securing of Prudence-Bonds Fifth
 and Ninth Series, respectively, and Carter, Ledyard and
 Milburn, hereby appeal to the United States Circuit Court**

430 of Appeals, for the Second Circuit, from an order of this Court made in said proceedings by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21st, 1939, whereby, among other things, the Reports of Special Master James G. Moore, on allowances, dated November 30th, 1938 and December 12, 1938, were modified and confirmed as modified, and the applications filed herein by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination, and that said President and Directors of the Manhattan Company and said Carter, 431 Ledyard and Milburn hereby appeal from each and every part of said order, as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in the paragraphs thereof, designated "3", "4", "5", "6", "7", "9" and "11".

Dated, New York, N. Y., March 17, 1939.

Yours, etc.

CARTER, LEDYARD & MILBURN

432 Pro se and as attorneys for President and Directors of Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series,

Office & P. O. Address,

No. 2 Wall Street

Borough of Manhattan,

New York, N. Y.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 21, 1939."

Notice of appeal by Alfred T. Davison.

433

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that the undersigned, Alfred T. Davison, hereby appeals to the Circuit Court of Appeals for the Second Circuit from the order of this Court entered herein on February 21, 1939, approving and confirming, as modified, the reports of Special Master James G. Moore, dated November 30, 1938 and December 12, 1938, and particularly from subdivision marked "7" thereof, in so far as the same denies the application of Alfred T. Davison for an allowance herein.

434

Dated, New York, N. Y. March 18, 1939.

Yours, &c.,

ALFRED T. DAVISON,
Attorney Pro Se,
2396 Third Avenue,
New York, New York.

435

The foregoing Notice of Appeal is stamped "Filed in Clerk's Office U. S. District Court, E. D. N. Y. March 20, 1939."

436

Notice of appeal by Prudence Bondholders Protective Association.

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

SIRS:

437

PLEASE TAKE NOTICE that the PRUDENCE BONDHOLDERS PROTECTIVE ASSOCIATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, on the facts from that portion designated and included in Paragraph "3" of an order of this Court made in the above entitled proceedings by the Honorable Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 29th, 1939, whereby among other things: (a) there was allowed to the PRUDENCE BONDHOLDERS PROTECTIVE ASSOCIATION only the sum of \$2,500.00, as compensation for all services rendered and all disbursements necessarily incurred by it in these proceedings.

Dated, New York, March 20th, 1939.

Yours, etc.,

438

KADEL, SHIELS & WEISS, Esqs.,
Attorneys for Prudence Bondholders
Protective Association, Intervenor,
Office & P. O. Address,
No. 122 East 42nd Street,
Borough of Manhattan,
City of New York.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 23, 1939."

Notice of appeal by Leon London, et al.

439

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that LEON LONDON, ALFRED E. HERZ, 440
ALEXANDER E. KLUPPT and McKERCHER & LINK, applicants
for allowances herein, hereby appeal to the United States
Circuit Court of Appeals, for the Second Circuit, both on
the law and on the fact, from an order of this court made
in the above entitled proceedings by the Hon. Robert A.
Inch, District Judge, and entered in the office of the Clerk
of this court on February 21st, 1939, whereby among other
things: (a) the report of Special Master James G. Moore
on allowances, dated November 30, 1938, was modified and
confirmed as modified; and (b) the applications of Leon
London, Alfred E. Herz, Alexander E. Kluppt and McKer-
cher & Link for allowances herein were denied as is set 441
forth in paragraph 9 of said order; and (c) from each and
every part of said order and report, both on the law and
on the facts as confirms said report and as denies to said

442 Leon London, Alfred E. Herz, Alexander E. Klupt and
McKercher & Link, their applications for allowances herein.

Dated New York, New York,
March 20th, 1939

Yours, etc.,

LEON LONDON, Pro se	ALEXANDER E. KLUPT, Pro se
Office & P. O. Address	Office & P. O. Address
21 East 40th Street	2 Lafayette Street
New York, New York	New York, New York

ALFRED E. HERZ, Pro se	McKERCHER & LINK, Pro se
Office & P. O. Address	Office & P. O. Address
277 Broadway	17 John Street
New York, New York	New York, New York

443

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 22, 1939."

**Notice of appeal by City-Bank Farmers Trust Company and
Delafield, Marsh, Porter & Hope.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

444

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that CITY BANK FARMERS TRUST COMPANY, as Successor Trustee under the following Trust Agreements:

a) Trust Agreement dated August 1, 1922, made between the Debtor herein and the Bank of America as

Trustee, securing Prudence-Bonds Corporation First Mortgage-Collateral Bonds, Series AA;

445

b) Trust Agreement dated October 1, 1924, made between the Debtor herein and the Bank of America as Trustee, securing Prudence-Bonds Corporation First Mortgage-Collateral Bonds, Third Series;

c) Trust Agreement dated October 15, 1924, made between the Debtor herein and the Bank of America as Trustee, securing Prudence-Bonds Corporation First Mortgage-Collateral Bonds, Fourth Series;

d) Trust Agreement dated October 1, 1925, made between the Debtor herein and the Bank of America as Trustee, securing Prudence-Bonds Corporation First Mortgage-Collateral Bonds, Seventh Series;

e) Trust Agreement dated August 1, 1929, made between the Debtor herein and the Bank of America National Association as Trustee, securing Prudence-Bonds Corporation First Mortgage-Collateral Bonds, Seventeenth Series;

446

and DELAFIELD, MARSH, PORTER & HOPE, hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made herein by the Honorable ROBERT A. INCH, District Judge, and entered in the office of the Clerk of this Court on the 21st day of February, 1939, whereby, among other things, the reports of Special Master JAMES G. MOORE, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified and the applications filed herein by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor, and by their respective attorneys appearing herein, for allowances for services and disbursements were held in abeyance for future determination, except in so far as the application of Delafield, Marsh, Porter & Hope was in part granted by a separate order made and entered herein, and that said City Bank Farmers Trust Company and said Delafield, Marsh, Porter & Hope hereby appeal from each and every part of said

447

448 order, as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in paragraphs thereof, designated "3", "4", "5", "6", "7", "9" and "11", and except that part of the paragraph designated "8" which denies the application of John M. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc., and except in so far as paragraphs "1", "2" and "10" of said order refer to and grant and confirm the partial allowance to Delafield, Marsh, Porter & Hope recommended in the report of Special Master JAMES G. MOORE dated November 30, 1938, and the separate order signed in respect thereto.

449 Dated, New York, N. Y., March 21, 1939.

Yours etc.,

DELAFIELD, MARSH, PORTER & HOPE

Pro se and as Attorneys for City Bank Farmers Trust Company, as Successor Trustee under Trust Indentures securing Prudence-Bonds Series AA, Third, Fourth, Seventh and Seventeenth Series;

Office and P. O. Address:

20 Exchange Place,

Borough of Manhattan,

New York City

450

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 23, 1939."

**Notice of appeal by Brooklyn Trust Company and Cullen
& Dykman.**

451

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that Brooklyn Trust Company as Trustee under a Trust Agreement made between the debtor herein and said Brooklyn Trust Company, dated March 1, 1927, securing Prudence Bonds, Eighth Series, and Cullen & Dykman hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made herein by the Honorable Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on the 21st day of February, 1939, whereby, among other things, the reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified and the applications filed herein by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor, and by their respective attorneys appearing herein, for allowances for services and disbursements were held in abeyance for future determination, except in so far as the application of Delafield, Marsh, Porter & Hope was in part granted by a separate order made and entered herein, and that said Brooklyn Trust Company and said Cullen & Dykman hereby appeal from each and every part of said order, as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in paragraphs thereof, designated "3", "4", "5", "6", "7", "9" and "11", and except that part of the paragraph desig-

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454 nated "8" which denies the application of John M. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc., and except in so far as paragraphs "1", "2", and "10" of said order refer to and grant and confirm the partial allowance to Delafield, Marsh, Porter & Hope recommended in the report of Special Master James G. Moore dated November 30, 1938, and the separate order signed in respect thereto.

Dated: Brooklyn, N. Y., March 21, 1939.

Yours, etc.,

455

CULLEN & DYKMAN,

Pro se and as Attorneys for
Brooklyn Trust Company as
Trustee under said Trust
Agreement securing Pru-
dence Bonds, Eighth Series;

Office & P. O. Address:

215 Montague Street,

Borough of Brooklyn,

City of New York.

456 The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 23, 1939."

Notice of appeal by Wm. T. Cowin, Trustee of The Prudence Company, Inc. 457

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that William T. Cowin, Trustee of The Prudence Company, Inc., Debtor in Reorganization under Section 77B of the Bankruptcy Act, hereby appeals to the United States Circuit Court of Appeals, Second Circuit, from an order of this Court made in the above entitled proceedings by Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21st, 1939, particularly from subdivision 8 thereof, in so far as (1) the said order denies the application of John M. McGrath and William T. Cowin, as Trustees of The Prudence Company, Inc., Debtor, for reimbursement of expenses in servicing the bond issues of sixteen series of Prudence-Bonds Corporations, and (2) the said order directs the said Trustees and the Trustees of the eighteen series of first mortgage collateral bonds issued by the Debtor, and each of them, to turn over and deliver to the Prudence-Bonds Corporation, the New Corporation, any and all funds in their possession or in their control and reserved or segre-

460 gated on account of servicing fees or expenses claimed by the said Trustees of The Prudence Company, Inc.

Dated, New York, New York
March 22nd, 1939.

Yours, etc.

THOMAS CRADOCK HUGHES and EMANUEL CELLER
Solicitors for Trustee of The Prudence
Company, Inc.

331 Madison Avenue
New York City

461 The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 23, 1939."

Notice of appeal by Simpson, Thacher & Bartlett.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

462 SIRs:

PLEASE TAKE NOTICE that SIMPSON THACHER & BARTLETT hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made herein by the Honorable ROBERT A. INCH, District Judge, and entered in the office of the Clerk of this Court on the 21st day of February, 1939, whereby, among other things, the reports of Special Master JAMES G. MOORE, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified and the applications filed herein by the eleven (11) Corporate Trustees

of the eighteen (18) Series of Bonds issued by the Debtor, and by their respective attorneys appearing herein, for allowances for services and disbursements were held in abeyance for future determination, except in so far as the application of Delafield, Marsh, Porter & Hope was in part granted by a separate order made and entered herein, and that said Simpson Thacher & Bartlett hereby appeal from each and every part of said order, as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in paragraphs thereof, designated "3", "4", "5", "6", "7", "9" and "11", and except that part of the paragraph designated "8" which denies the application of John M. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc., and except in so far as paragraphs "1", "2" and "10" of said order refer to and grant and confirm the partial allowance to Delafield, Marsh, Porter & Hope recommended in the report of Special Master JAMES G. MOORE dated November 30, 1938, and the separate order signed in respect thereto.

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464

Dated, New York, N. Y., March 22, 1939.

Yours, etc.,

SIMPSON THACHER & BARTLETT,
Office and Post Office Address,
120 Broadway,
Borough of Manhattan,
New York City.

465

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 23, 1939."

466

**Notice of appeal by Manufacturers Trust Company and
Newman & Bisco.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

SIRS:

467

PLEASE TAKE NOTICE that **MANUFACTURERS TRUST COMPANY**, as Successor Trustee under the following Trust Agreements:

(a) Trust Agreement dated as of February 1, 1928, made between Prudence-Bonds Corporation and Chatham Phenix National Bank and Trust Company, as Trustee, securing Prudence-Bonds Corporation First Mortgage-Collateral Bonds, Twelfth Series;

(b) Trust Agreement dated as of June 1, 1928, made between Prudence-Bonds Corporation and The State Bank and Trust Company, as Trustee, securing Prudence Bonds Corporation First Mortgage-Collateral Bonds, Thirteenth Series;

468

and **NEWMAN & BISCO**, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from an order of this Court made herein by the Honorable **ROBERT A. INCH**, District Judge, and entered in the office of the Clerk of this Court on the 21st day of February, 1939, whereby among other things, the reports of Special Master **JAMES G. MOORE**, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified and the applications filed herein by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by

the Debtor, and by their respective attorneys appearing herein, for allowances for services and disbursements were held in abeyance for future determination, and that said Manufacturers Trust Company and said Newman & Bisco hereby appeal from each and every part of said order, as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in paragraphs thereof, designated "5", "7", "9" and "11", and except that part of the paragraph designated "8" which denies the application of John M. McGrath and William T. Cowin as Trustees of The Prudence Company, Inc. 469

Dated, New York, March 22, 1939.

Yours, etc., 470

NEWMAN & BISCO,
Pro se and as Attorneys for Manufacturers
Trust Company, as Successor Trustee
under Trust Indentures securing Pru-
dence-Bonds, Twelfth and Thirteenth
Series;

Office & P. O. Address,
165 Broadway,
Borough of Manhattan, ✕
City of New York

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 24, 1939." 471

472

Notice of appeal by Lawrence R. Condon.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

473

PLEASE TAKE NOTICE, that LAWRENCE R. CONDON, applicant for an allowance herein, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, both on the law and on the facts, from an order of this Court made in the above entitled proceedings by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on February 21st, 1939, whereby among other things: (a) the report of Special Master James G. Moore on allowances, dated November 30, 1938, was modified and confirmed as modified; and (b) the application of Lawrence R. Condon for an allowance herein was denied as is set forth in said order; and (c) from each and every part of said order and report, both on the law and on the facts as confirms said report and as denies to Lawrence R. Condon his application for allowance herein.

Dated, New York, March 22, 1939.

474

Yours &c.,

LAWRENCE R. CONDON, Pro se
Office & P. O. Address,
165 Broadway,
Borough of Manhattan,
City of New York.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court, E. D. N. Y., March 24, 1939."

Notice of appeal by Archibald Palmer.

475

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that ARCHIBALD PALMER, attorney for the Intervening Bondholders' Committee known as the Mayer Committee, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from an order of this Court, made in the above entitled proceedings by the Honorable Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on the 21st day of February, 1939, whereby an allowance of \$1,500.00 was granted to ARCHIBALD PALMER, attorney for said Mayer Committee, for services, upon the ground that said allowance is inadequate, and said ARCHIBALD PALMER hereby appeals from each and every part of said order, as well as from the whole thereof, both on the law and the facts.

476

Dated, New York, March 23, 1939.

477

Yours, &c.,

ARCHIBALD PALMER,
Appellant pro se,
Office & P. O. Address,
No. 2 Lafayette Street,
Borough of Manhattan,
City of New York.

To:

478

CHARLES M. McCARTY, Esq.,
Attorney for Prudence Bonds Corporation,
No. 100 East 42nd Street,
New York City.

JAMES F. DEALY, Esq.,
Attorney for Reconstruction Finance Corp.,
Intervenor,
No. 30 Broad Street,
New York City.

479

GEORGE C. WILDERMUTH, Esq.,
Pro se, and as attorney for Charles H. Kelby
and Clifford S. Kelsey, as Trustees of
Prudence Bonds Corporation, Debtor,
No. 188 Montague Street,
Brooklyn, New York.

HONORABLE PERCY G. B. GILKES,
Clerk of United States District Court
for the Eastern District of New York.

The foregoing Notice of Appeal is stamped "Filed in
Clerk's Office, U. S. District Court, E. D. N. Y., March 23,
1939."

480

Notice of appeal by Edward Endelman and Jacob A.
Freedman.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that Edward Endelman and Jacob
A. Freedman, associate counsel to the General Committee

for Prudence Securities, an intervenor in the above-entitled proceedings, hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from the order of this Court made in the above-entitled proceedings by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on the 21st day of February, 1939, which order confirmed the intermediate report of Hon. James G. Moore, Special Master, filed November 30th, 1938, and which order further denied the joint application of Edward Endelman and Jacob A. Freedman for an allowance as prayed for in their joint petition verified May 7th, 1938, the said application having been made together with Messrs. Cullen & Dykman, who were associate counsel with appellants herein but who subsequently withdrew from participation in any allowance which might be granted pursuant to said joint application, and which order further denied to the appellants herein, as associate counsel to the General Committee for Prudence Securities any allowance whatsoever; and the said Edward Endelman and Jacob A. Freedman hereby appeal from each and every part of the said order as well as from the whole thereof, both on the law and on the facts.

PLEASE TAKE FURTHER NOTICE, that in view of the fact that various orders were entered with the Clerk of this Court on February 21, 1939, and to avoid confusion, a copy of the order hereby appealed from, is hereto annexed.

Dated, New York, N. Y., March 22nd, 1939.

Yours, etc.,

EDWARD ENDELMAN and
JACOB A. FREEDMAN,

Attorneys pro se,
Office & P. O. Address,
299 Broadway,
Borough of Manhattan,
City of New York.

To:

484

CHARLES M. McCARTY, Esq.,
 Attorney for Prudence-Bonds Corporation,
 100 East 42nd Street,
 Manhattan, New York City.

JAMES F. DEALY, Esq.,
 Attorney for Reconstruction Finance Corporation,
 30 Broad Street,
 Manhattan, New York City.

THOMAS C. HUGHES and EMANUEL CELLER, Esqs.,
 Attorneys for William T. Cowin, Trustee of The
 Prudence Company, Inc.,
 331 Madison Avenue,
 Manhattan, New York City.

485

The foregoing Notice of Appeal is stamped "Filed in
 Clerk's office U. S. District Court E. D. N. Y., March 22,
 1939."

**Mandate of Circuit Court of Appeals on July 26, 1939,
 decision.**

UNITED STATES OF AMERICA, ss:

486

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

TO THE HONORABLE JUDGE OF THE DIS-
 TRICT COURT OF THE UNITED STATES
 FOR THE EASTERN DISTRICT OF
 NEW YORK.

GREETING:

Whereas, lately in the District Court of the United
 States for the Eastern District of New York, before you or
 some of you, in a cause entitled In the Matter of Prudence

Bonds Corporation, orders were entered in the office of the Clerk of said Court from which appeals were duly taken;

487

as by the inspection of the transcript of the record of the said Court, which was brought into the United States Circuit Court of Appeals for the Second Circuit, by virtue of an appeal, agreeably to the Act of Congress, in such case made and provided, fully and at large appears,

and Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty-eight, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record, and was argued by counsel.

On consideration Whereof, IT IS HEREBY

488

Ordered, Adjudged, and Decreed that on the appeal of Bank of Manhattan Company and others in the same position the order of the District Court deferring consideration of applications for allowances by the corporate trustees and their attorneys is reversed, and the matter is remanded to the District Court with directions to consider the applications and determine the allowances to be given.

You, therefore, are hereby commanded that such further proceeding be had in said cause, in accordance with the decision of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable *Charles Evans Hughes*, Chief Justice of the United States, the 14th day of August, in the year of our Lord one thousand nine hundred and thirty-nine.

489

(SEAL)

D. E. ROBERTS
Clerk of the United States
Circuit Court of Appeals
for the Second Circuit

The foregoing paper is stamped "Filed in Clerk's Office,
U. S. District Court, E.D.N.Y., August 15, 1939."

Order of District Court on Mandate.

490

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

Appeals having been duly taken to the United States Circuit Court of Appeals for the Second Circuit by

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492

(a) President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, Carter, Ledyard & Milburn; City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, and Delafield, Marsh, Porter & Hope; Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, and Cullen & Dykman; Simpson, Thacher & Bartlett; Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, and Newman and Bisco, from substantially the same parts of an order of the United States District Court, Eastern District of New York, made by Hon. Robert A. Inch, District Judge and entered in the office of the Clerk of said Court on February 21, 1939, whereby, among other things, the reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified, and the applications filed herein by the eleven (11) Corporate Trustees of the Eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination; and

(b) Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation from said order, and other orders; and

(c) by other parties from said order and other orders; and

Said appeals having been duly heard by the United States Circuit Court of Appeals for the Second Circuit, and the said Court, by its mandate filed herein, August 15, 1939, having on the appeals of the Bank of Manhattan Company and others in the same position, duly reversed so much of said order entered herein February 21, 1939, as deferred consideration of applications for allowances by the said corporate trustees and their attorneys, and having remanded these proceedings to this Court for further proceedings in conformity with the decision and mandate of the United States Circuit Court of Appeals for the Second Circuit; 493

Now, THEREFORE, upon the mandate of the said United States Circuit Court of Appeals for the Second Circuit filed herein the 15th day of August, 1939, on the decision of the said Circuit Court of Appeals, and on motion of Maclay, Lyeth and Williams, attorneys for President and Directors of the Manhattan Company, as Trustee of Prudence Bonds, Fifth and Ninth series, it is hereby 494

ORDERED, ADJUDGED, AND DECREED that:

1. The mandate of the United States Circuit Court of Appeals for the Second Circuit, filed herein August 15, 1939, be and the same hereby is made the order of this Court.

2. So much of the order made by Honorable Robert A. Inch, United States District Judge, entered herein February 21, 1939, as held in abeyance for future determination the applications, filed herein by the eleven corporate trustees of the eighteen series of bonds issued by the debtor and their respective attorneys appearing herein, for allowances for services and disbursements, is reversed in accordance with said mandate. 495

Brooklyn, N. Y., September 18, 1939

ROBERT A. INCH
United States District Judge
Eastern District of New York

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Order of Nov. 6, 1939 fixing allowances to corporate trustees, etc.

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 6th day of November, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

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This Court having heretofore and by orders dated March 11, 1936, May 6, 1936, July 21, 1937, June 3, 1938, June 6, 1938 and eighteen (18) separate orders each dated January 18, 1938, having referred the consideration of the persons and corporations to whom allowances for services or expenses should be made under the Plans of Reorganization confirmed in these proceedings and the provisions of Section 77B of the Bankruptcy Act, together with the amounts thereof, to Special Master James G. Moore, for written report and recommendation to this Court with his opinion thereon, and proceedings with respect to such matter having, thereafter, been duly had before the said Special Master and the said Special Master having filed herein an Intermediate Report dated November 30, 1938, passing upon the applications for allowances of all of the applicants herein except the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor, and their respective attorneys appearing herein, and by a notice dated November 30, 1938, having given notice of the filing of said Report, and Prudence Securities Advisory Group, one of the intervenors herein, by notice of motion dated December 1, 1938, having moved herein for an order passing upon said

Intermediate Report, taking such action thereon as this Court might deem advisable and granting such other and further relief as to this Court might seem just and proper, and said motion having duly come on to be heard before this Court on the 9th day of December, 1938, and having been duly adjourned to the 16th day of December, 1938, and said Special Master having filed herein an Intermediate Report dated December 12, 1938, passing upon the applications for allowances of the said eleven (11) Corporate Trustees and their respective attorneys appearing herein, and by a notice dated December 12, 1938, having given notice of the filing of said Report and notice that said Report would be handed up to this Court on the 16th day of December, 1938, for consideration in conjunction with said Special Master's Report dated November 30, 1938, then and there before this Court for consideration and the consideration of said two (2) Reports having duly come on to be heard on the 16th day of December, 1938; and this Court having, on various dates during the month of February, 1939, made several orders passing upon said Special Master's Reports, including an order dated February 21, 1939, whereby, among other things, it was adjudged and decreed, that there should be held in abeyance for future consideration the application filed herein by the Trustees of New York Investors, Inc., for an allowance for disbursements and the applications filed herein by the eleven (11) respective Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor, and by their respective attorneys appearing herein, for allowances for services and disbursements, together with the objections and exceptions filed herein in respect of said applications and the Reports of the Special Master pertaining thereto, except insofar as the application of Messrs. Delafield, Marsh, Porter & Hope, attorneys for City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, had been granted in part by separate order made and entered herein, and various appeals from said

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502 orders on allowances having been duly taken to the United States Circuit Court of Appeals, for the Second Circuit, by various parties in interest herein, as more specifically appears in the record of said appeals, and said appeals having been duly heard by said United States Circuit Court of Appeals and said Court by its mandate filed herein August 15, 1939, having on the appeals of Bank of Manhattan Company and others in the same position, duly reversed so much of the aforesaid order of February 21, 1939, as deferred consideration of applications for allowances by the said Corporate Trustees and their attorneys, and having remanded these proceedings to this Court for further proceedings in conformity with the decision and mandate of the said United States Circuit Court of Appeals, and this
503 Court by order made and entered herein on September 18, 1939, having ordered, that the said mandate of the said United States Circuit Court of Appeals be made the order of this Court;

Now, upon the said Intermediate Reports of Special Master James G. Moore dated November 30, 1938 and December 12, 1938, and the applications for allowances and the objections and exceptions thereto and the exhibits and papers and the record of the proceedings had before said Special Master in respect of said Reports, including the papers and exhibits set forth in "Appendix A" of each of said Reports, and upon the exceptions and objections and other papers filed herein in respect of said Reports and recited in the aforesaid order dated February 21, 1939, and after hearing the attorneys for various parties in interest in support of and in opposition to the confirmation of said Reports of Special Master James G. Moore, and in support of and in opposition to the various exceptions and objections filed in respect of said Reports, and upon the above mentioned orders of this Court, the opinion of this Court, dated February 1, 1939, by which it was determined that it was practicable to apply the provisions of Chapter X,
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Article 13, of the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. Section 341 et seq) to all applications for allowances, and the opinion of this Court dated March 15, 1939, and after due consideration of the applications for allowances by the said Corporate Trustees and their attorneys and by the Trustees of New York Investors, Inc., and due deliberation having been had and upon filing the opinion of this Court dated October 26, 1939, it is

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ORDERED, ADJUDGED AND DECREED, that

1. The said Report of Special Master James G. Moore, dated November 30, 1938, and filed herein, insofar as said Report relates to the application of the Trustees of New York Investors, Inc., for an allowance, of reimbursement for expenses be and the same hereby is, in all respects approved and confirmed; the findings of fact and conclusions of law contained in said Report in respect of said application, be and the same hereby are, made the findings of fact and conclusions of law of this Court; the objections and exceptions of the Trustees of New York Investors, Inc., to the said Report, be and the same hereby are, in all respects overruled and dismissed, and the said application of the Trustees of New York Investors, Inc., be and the same hereby is, in all respects denied;

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2. The said Report of Special Master James G. Moore, dated December 12, 1938, and filed herein, be and the same hereby is, in all respects approved and confirmed and the findings of fact and conclusions of law contained in said Report, be and the same hereby are, made the findings of fact and conclusions of law of this Court, except as otherwise modified by this order;

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3. All objections and exceptions to said Report dated December 12, 1938, be and the same hereby are, in all respects overruled and dismissed, except insofar as said objections and exceptions are sustained by this order;

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4. The sum of \$3,770.76, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Guaranty Trust Company of New York, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Series A, either in these proceedings or otherwise, for which said Guaranty Trust Company of New York has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Guaranty Trust Company of New York, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$1,500, and payment of the balance of said sum of \$3,770.76, to wit, the sum of \$2,270.76, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said Guaranty Trust Company of New York, as Trustee of Prudence-Bonds, Series A, and until further order of this Court;

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5. The sum of \$10,103.47, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Davis, Polk, Wardwell, Gardiner & Reed, for all services rendered and disbursements necessarily incurred by them as attorneys for Guaranty Trust Company of New York, as Trustee of Prudence-Bonds, Series A, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Davis, Polk, Wardwell, Gardiner & Reed, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$2,603.47, and payment of the balance of said sum of \$10,103.47, to wit, the sum of \$7,500, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the ac-

count filed herein by said Guaranty Trust Company of New York, as Trustee of Prudence-Bonds, Series A, or until further order of this Court; 511

6. The sum of \$61,214.34, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to City Bank Farmers Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, either in these proceedings or otherwise, for which said City Bank Farmers Trust Company has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said City Bank Farmers Trust Company, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$6,829.60, and payment of the balance of said sum of \$61,214.34, to wit, the sum of \$54,384.74, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by said City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, and until further order of this Court; 512

7. The sum of \$63,632.81, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Delafield, Marsh, Porter & Hope, for all services rendered and disbursements necessarily incurred by them as attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated or for which an allowance has not heretofore been granted by order made and entered herein on February 21, 1939, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed 513

514 to pay to said Messrs. Delafield, Marsh, Porter & Hope, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$13,632.81, and payment of the balance of said sum of \$63,632.81, to wit, the sum of \$50,000, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed hereby by said City Bank Farmers Trust Company as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, or until further order of this Court;

515 8. The sum of \$59,714.35, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to President & Directors of the Manhattan Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Fifth and Ninth Series, either in these proceedings or otherwise for which said President & Directors of the Manhattan Company, has not heretofore been compensated, and said President & Directors of the Manhattan Company, be and hereby is, authorized and directed to pay to itself, 41 days after the entry of this order, out of Fifth and Ninth Series Trust Funds in its possession for such purpose, the sum of \$3,380.94, pro rata on the basis of Fifth and Ninth Series bonds outstanding on June 29, 1934, the date of the commencement of these proceedings, and payment of the balance of said sum of \$59,714.35, to wit, the sum of \$56,333.41, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by said President & Directors of the Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, and until further order of this Court;

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9. The sum of \$56,000, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Carter, Ledyard & Milburn, for all services ren-

dered and disbursements necessarily incurred by them as attorneys for President & Directors of the Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and said President & Directors of the Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, be and hereby is, authorized and directed to pay to said Messrs. Carter, Ledyard & Milburn, 41 days after the entry of this order, out of Fifth and Ninth Series Trust Funds in its possession for such purpose, the sum of \$6,000, pro rata, on the basis of Fifth and Ninth Series bonds outstanding on June 29, 1934, the date of the commencement of these proceedings, and payment of the balance of said sum of \$56,000, to wit, the sum of \$50,000, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by said President & Directors of the Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, or until further order of this Court;

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10. The sum of \$20,927.47, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Central Hanover Bank and Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Sixth and Eighteenth Series, either in these proceedings or otherwise for which said Central Hanover Bank and Trust Company, has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Central Hanover Bank and Trust Company, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$5,000, and payment of the balance of said sum of \$20,927.47, to wit, the sum of \$15,927.47, be and hereby is, withheld pending disposition of the proceedings herein for the

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judicial settlement and approval of the accounts filed herein by said Central Hanover Bank and Trust Company, as Trustee of Prudence-Bonds, Sixth and Eighteenth Series, and until further order of this Court;

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11. The sum of \$46,491.50, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Larkin, Rathbone & Perry, for all services rendered and disbursements necessarily incurred by them as attorneys for Central Hanover Bank and Trust Company, as Trustee of Prudence-Bonds, Sixth and Eighteenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Larkin, Rathbone & Perry, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$6,491.50, and payment of the balance of said sum of \$46,491.50, to wit, the sum of \$40,000, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by said Central Hanover Bank and Trust Company, as Trustee of Prudence-Bonds, Sixth, and Eighteenth Series, or until further order of this Court;

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12. The sum of \$23,062.69, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Brooklyn Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Eighth Series, either in these proceedings or otherwise, for which said Brooklyn Trust Company has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Brooklyn Trust Company, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$2,779.51, and

payment of the balance of said sum of \$23,062.69, to wit, the sum of \$20,283.18, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, and until further order of this Court; 523

13. The sum of \$31,153.85, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Cullen & Dykman, for all services rendered and disbursements necessarily incurred by them as attorneys for Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Cullen & Dykman, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$6,153.85, and payment of the balance of said sum of \$31,153.85, to wit, the sum of \$25,000, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, or until further order of this Court; 524

14. The sum of \$1,626.08, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to State Street Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Tenth Series, either in these proceedings or otherwise, for which said State Street Trust Company has not heretofore been compensated, and payment of said sum, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said State Street Trust Company, as Trustee of Prudence-Bonds, Tenth Series, and until further order of this Court; 525

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15. The sum of \$6,403.76, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Peabody, Arnold, Batchelder & Luther, for all services rendered and disbursements necessarily incurred by them as attorneys for State Street Trust Company, as Trustee of Prudence-Bonds, Tenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and payment of said sum, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said State Street Trust Company, as Trustee of Prudence-Bonds, Tenth Series, or until further order of this Court;

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16. The sum of \$1,000, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Chicago Title and Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Eleventh Series, either in these proceedings or otherwise, for which said Chicago Title and Trust Company has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Chicago Title and Trust Company, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the said sum of \$1,000;

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17. The sum of \$15,972.75, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Simpson Thacher & Bartlett and Sonnenschein, Berkson, Lautmann, Levinson & Morse, for all services rendered and disbursements necessarily incurred by them as attorneys for Chicago Title and Trust Company, as Trustee of Prudence-Bonds, Eleventh Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized

and directed to pay to said Messrs. Simpson Thacher & Bartlett and Sonnenschein, Berkson, Lautmann, Levinson & Morse, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$3,472.75, and payment of the balance of said sum of \$15,972.75, to wit, the sum of \$12,500, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said Chicago Title and Trust Company, as Trustee of Prudence-Bonds, Eleventh Series, or until further order of this Court;

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18. The sum of \$47,411.72, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance to Manufacturers Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, either in these proceedings or otherwise, for which said Manufacturers Trust Company has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Manufacturers Trust Company, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$6,236.92, and payment of the balance of said sum of \$47,411.72, to wit, the sum of \$41,174.80, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by said Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, and until further order of this Court;

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19. The sum of \$32,799.57, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Newman & Bisco, for all services rendered and disbursements necessarily incurred by them as attorneys for Manufacturers Trust Company, as Trustee of Prudence-

532 Bonds, Twelfth and Thirteenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Newman & Bisco, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$5,299.57, and payment of the balance of said sum of \$32,799.57, to wit, the sum of \$27,500, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by said Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, or until further order of
533 this Court;

20. The sum of \$25,092.06, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance to The Chase National Bank of the City of New York, for all services rendered and disbursements necessarily incurred by it as Trustee of Prudence-Bonds, Fourteenth Series, either in these proceedings or otherwise, for which said The Chase National Bank of the City of New York has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said The Chase National Bank of the City of New York, 41 days after the entry of this order, out
534 of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$3,536.13, and payment of the balance of said sum of \$25,092.06, to wit, the sum of \$21,555.93, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said The Chase National Bank of the City of New York, as Trustee of Prudence-Bonds, Fourteenth Series, and until further order of this Court;

21. The sum of \$22,057.01, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to

Messrs. Milbank, Tweed & Hope, for all services rendered and disbursements necessarily incurred by them as attorneys for The Chase National Bank of the City of New York, as Trustee of Prudence-Bonds, Fourteenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Milbank, Tweed & Hope, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$4,557.01, and payment of the balance of said sum of \$22,057.01, to wit, the sum of \$17,500, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said The Chase National Bank of the City of New York, as Trustee of Prudence-Bonds, Fourteenth Series, or until further order of this Court;

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22. The sum of \$20,445.28, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Chemical Bank & Trust Company, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Fifteenth Series, either in these proceedings or otherwise, for which said Chemical Bank & Trust Company has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Chemical Bank & Trust Company, 41 days after the entry of this order, out of the fund in its possession, for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$7,899.99, and payment of the balance of said sum of \$20,445.28, to wit, the sum of \$12,545.29, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said Chemical Bank & Trust Company, as Trustee of Prudence-Bonds, Fifteenth Series, and until further order of this Court;

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538 23. The sum of \$25,620.94, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Wright, Gordon, Zachry & Parlin, for all services rendered and disbursements necessarily incurred by them as attorneys for Chemical Bank & Trust Company, as Trustee of Prudence-Bonds, Fifteenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Wright, Gordon, Zachry & Parlin, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$5,620.94, and payment of the balance of said sum of 539 \$25,620.94, to wit, the sum of \$20,000, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said Chemical Bank & Trust Company, as Trustee of Prudence-Bonds, Fifteenth Series, or until further order of this Court;

540 24. The sum of \$27,074.29, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to The Marine Midland Trust Company of New York, for all services rendered and disbursements necessarily incurred by it, as Trustee of Prudence-Bonds, Sixteenth Series, either in these proceedings or otherwise, for which said The Marine Midland Trust Company of New York has not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said The Marine Midland Trust Company of New York, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$5,295.06, and payment of the balance of said sum of \$27,074.29, to wit, the sum of \$21,779.23, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed

herein by said The Marine Midland Trust Company of New York, as Trustee of Prudence-Bonds, Sixteenth Series, and until further order of this Court; 541

25. The sum of \$24,522.50, be and hereby is, fixed as fair and reasonable compensation, as and for an allowance, to Messrs. Sullivan & Cromwell, for all services rendered and disbursements necessarily incurred by them as attorneys for The Marine Midland Trust Company of New York, as Trustee of Prudence-Bonds, Sixteenth Series, either in these proceedings or otherwise, for which said attorneys have not heretofore been compensated, and Prudence-Bonds Corporation, the New Corporation, be and hereby is, authorized and directed to pay to said Messrs. Sullivan & Cromwell, 41 days after the entry of this order, out of the fund in its possession for such purpose, pursuant to the order made and entered herein on April 5, 1938, the sum of \$4,522.50, and payment of the balance of said sum of \$24,522.50, to wit, the sum of \$20,000, be and hereby is, withheld pending disposition of the proceedings herein for the judicial settlement and approval of the account filed herein by said The Marine Midland Trust Company of New York, as Trustee of Prudence-Bonds, Sixteenth Series, or until further order of this Court; 542

26. The sums herein directed to be paid to the respective Corporate Trustees and their attorneys, are awarded as compensation for services rendered and disbursements incurred "IN CONNECTION WITH THE PLANS AND THE PROCEEDINGS", as recommended by the Special Master in "PART I" of his Report dated December 12, 1938, and the sums withheld pending further order of this Court as hereinabove provided, are classified as compensation for services and disbursements which are included in "LIENS UNDER TRUST AGREEMENTS" of the Corporate Trustees, as recommended by the Special Master in "PART II" of his said Report; and 543

27. This Court reserves and retains jurisdiction to give such further authorizations and directions as may be neces-

544 sary to carry out this order and to make effective, consummate and carry out the Amended Plans of Reorganization approved and confirmed herein, and generally to determine any and all matters pertaining to these proceedings or to the Plans of Reorganization and not determined heretofore or by this order.

ROBERT A. INCH
U. S. D. J. E. D. N. Y.

Order to show cause of District Court on motion by R. F. C. for leave to appeal from order of Nov. 6, 1939.

545 UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

Upon the annexed petition of Reconstruction Finance Corporation, duly verified the 8th day of November, 1939, and this court being fully advised, it is

546 ORDERED, that the Debtor, the Trustees of the Debtor, and all intervenors and applicants for allowances in the above entitled proceedings, or their respective attorneys appearing herein, show cause before the undersigned, at the Courthouse, Post-Office Building, Washington Street, Borough of Brooklyn, City and State of New York, on the 17th day of November, 1939 at two o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein granting leave to Reconstruction Finance Corporation, an intervenor herein, to take and prosecute an appeal to the United States Circuit Court of Appeals for the Second Circuit, from an order duly made and entered herein on the 6th day of November, 1939, by which, among other things, the re-

port of Special Master James G. Moore dated December 12, 1938 was in all respects confirmed and allowances to the corporate trustees and their attorneys, were fixed, and why said Reconstruction Finance Corporation should not be granted such other and further relief as may be just and proper in the premises; AND sufficient cause appearing therefor, it is further

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ORDERED, that service of this order and the petition upon which it is granted, by mailing copies thereof to the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in these proceedings, or to their respective attorneys or solicitors appearing herein, on the 13th day of November, 1939, shall be deemed good and sufficient service.

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Dated, New York, N. Y., November 8, 1939

ROBERT A. INCH

U. S. D. J.

Petition of R. F. C. for leave to appeal from order of
Nov. 6, 1939.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

549

PETITION OF RECONSTRUCTION FINANCE CORPORATION
AN INTERVENOR HEREIN, FOR LEAVE TO APPEAL

*To the Honorable Judges of the District Court of the
United States for the Eastern District of New York:*

The petition of Reconstruction Finance Corporation respectfully shows as follows:

(1) The petitioner is a corporation duly organized and existing under and pursuant to an Act of Congress approved

550 January 22, 1932, all of the stock of which is beneficially owned by the United States. It owns the entire outstanding stock of the Debtor herein, and has been duly authorized to intervene generally herein.

551 (2) Heretofore there was duly referred, for written report and recommendation, to James G. Moore, Esq., Special Master, by orders made and filed herein, the matter of the persons and corporations to whom allowances for services or expenses should be made under the plans of reorganization confirmed herein and the provisions of 77B of the Bankruptcy Act. Pursuant to such orders numerous applications for allowances for services and disbursements were filed with said Special Master and petitioner thereafter filed an answering affidavit and objections in opposition to the granting of substantially all of said applications for allowances.

552 (3) Thereupon and after due consideration of the applications and answers and other proofs filed in opposition to such applications, Special Master Moore filed herein an intermediate report dated November 30, 1938 wherein he recommended that allowances for services and disbursements be granted in the aggregate sum of \$462,014.08 to various applicants other than corporate trustees and their counsel and recommended that other applications be denied *in toto*. In such report, he further reserved for future determination the applications for allowances filed by the eleven corporate trustees of the outstanding eighteen series of the Debtor's bonds and their counsel. Subsequently, however, and by an additional report dated December 12, 1938 and duly filed herein, Special Master Moore recommended that allowances, for services and disbursements in the aggregate sum of \$626,862.41 be granted to such eleven corporate trustees and their counsel.

(4) Both of said reports came on for consideration by this court at a hearing duly held on December 16, 1938, and

petitioner by its counsel appeared in opposition to the confirmation or approval thereof.

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(5) Thereafter and under date of February 1, 1939, Judge Inch, the District Judge, before whom these proceedings are pending and before whom the aforesaid hearing on the Special Master's abovementioned reports were held, filed an opinion approving with some modifications the Special Master's Report of November 30, 1938; and reserving for future consideration the application of the Trustees of New York Investors for reimbursement of \$50,954.64 expended by them under order of Judge Inch to defray various reorganization expenses. By his decision, Judge Inch also reserved for future determination, the allowances recommended by the Special Master in his report dated December 12, 1938, in the aggregate sum of \$626,862.41 for the above referred to eleven corporate trustees and counsel.

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(6) Fourteen orders were entered on February 14, February 16 and February 21, 1939, respectively, in accordance with the opinion of Judge Inch dated February 1, 1939, directing the payment of allowances awarded on various applications and reserving for future consideration the applications of the eleven corporate trustees and their counsel as well as the application of the Trustees of New York Investors for an allowance for disbursements.

(7) RFC and the New Corporation after leave duly granted by this court appealed from the above fourteen orders granting allowances amounting to \$478,912.12 and from that part of one of said orders which reserved for future determination the applications of the eleven corporate trustees and their counsel. Other parties in interest also appealed from various of said orders or parts thereof.

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(8) On or about the 15th day of August, 1939, the Circuit Court of Appeals issued its mandate reversing that part of one of the orders of February 21, 1939 by which this court reserved for future consideration the applications of

556 the eleven corporate trustees and their counsel. Said mandate also directed that this court pass upon the applications of the corporate trustees and their counsel and further ordered that when its directions with respect to passing upon the applications of corporate trustees and their counsel had been complied with, a supplemental record be filed showing such subsequent proceedings. The Circuit Court of Appeals reserved decision on the balance of the orders so appealed from. Such mandate of the Circuit Court of Appeals was duly made the order of this court by order herein made on the 18th day of September, 1939. Thereafter and on October 26, 1939 Judge Inch handed down an opinion confirming in all respects the report of Special Master James G. Moore dated December 12, 1938, and on 557 the 6th day of November, 1939 the order now desired to be appealed from was made and entered herein, carrying out the terms of said decision.

(9) Petitioner, feeling itself aggrieved by the order last mentioned intends, not only to file the supplemental record on the appeals now pending before the Circuit Court of Appeals as aforesaid, as directed by that Court, but also to appeal from the said order. Petitioner is advised by counsel that this will be necessary in order that the Circuit Court of Appeals if it should desire to do so, will have jurisdiction to modify the allowances to corporate trustees. 558 Petitioner believes in view of the total amounts awarded to applicants for allowances herein and the total cost of this reorganization, the amounts awarded to corporate trustees and counsel are unreasonable and excessive in the circumstances and should be further drastically reduced.

(10) As part of this application petitioner hereby respectfully refers to its petition herein duly verified March 10, 1939 upon which it was granted leave to appeal from the other orders on allowances herein and makes said petition a part hereof with the same force and effect as if the matters therein set forth were repeated here at length. The

same reasons for which petitioner asked leave to appeal from said orders are applicable here as reasons why this application should be granted and petitioner does not desire to burden this court with a repetition thereof in this application. 559

(11) An order to show cause is requested so that petitioners may proceed promptly with the appeal it intends to take and have the same considered by the Circuit Court of Appeals at the same time it passes upon the appeals as to which it has reserved decision as aforesaid.

(12) No previous application has been made to any court or judge for the relief herein requested.

Wherefore, petitioner respectfully prays that an order in the form submitted herewith be made herein requiring the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the above entitled proceeding or their respective attorneys appearing herein, to show cause at a time and place to be fixed in said order, why leave should not be granted to it to appeal from the aforesaid order of this court dated November 6, 1939, passing upon applications for allowance of the corporate trustees and their attorneys, and why petitioner should not be granted such other and further relief as may be just and proper in the premises. 561

Dated: New York, November 8, 1939. 561

RECONSTRUCTION FINANCE CORPORATION

By JEROME THRALLS

Special Representative

JAMES F. DEALY

Attorney for Reconstruction

Finance Corporation

30 Broad Street

Borough of Manhattan

New York, N. Y.

(Verified November 8, 1937.)

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Order granting R. F. C. leave to appeal from order of
Nov. 6, 1939.

At a Stated Term of the United States District Court for the Eastern District of New York, held at the United States Court House thereof, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 20th day of November, 1939.

Present: Hon. ROBERT A. INCH, District Judge.

[CAPTION]

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Reconstruction Finance Corporation, an intervenor herein, having duly moved this Court by order to show cause dated November 8, 1939, for an order granting to it leave to take and prosecute an appeal to the United States Circuit Court of Appeals for the Second Circuit from an order duly made and entered herein on the 6th day of November, 1939, referred to in the said order to show cause and the petition of Reconstruction Finance Corporation duly verified November 8, 1939, upon which said order to show cause was based, and said application having duly come on to be heard before this Court on the 17th day of November, 1939,

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Now, on reading and filing the aforesaid order to show cause dated November 8, 1939, the petition of Reconstruction Finance Corporation, duly verified November 8, 1939, upon which the same was based, together with proof of the due service thereof in accordance with the provisions of said order to show cause, the affidavit of Charles H. Kelby duly verified the 14th day of March, 1939, and the petition of Reconstruction Finance Corporation duly verified March 15, 1939, and after hearing James F. Dealy, Esq., counsel for said Reconstruction Finance Corporation and Charles M. McCarty, Esq., attorney for Prudence-Bonds Corpora-

tion (New Corporation), in support of said application and there being no opposition thereto, and due deliberation having been had thereon, it is hereby

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ORDERED, that the aforesaid application of Reconstruction Finance Corporation be and the same hereby is in all respects granted; and it is further

ORDERED, that Reconstruction Finance Corporation, an intervenor herein, be and it hereby is granted leave of this Court to take and prosecute an appeal to the United States Circuit Court of Appeals for the Second Circuit from all or any part of the order of this Court duly made and entered herein on the 6th day of November, 1939, by which, among other things, the report of Special Master James G. Moore dated December 12, 1938 was in all respects confirmed and allowances to the corporate trustees and their attorneys, were fixed.

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ROBERT A. INCH
U. S. D. J.

Notice of appeal by R. F. C. from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

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SIRS:

PLEASE TAKE NOTICE, that RECONSTRUCTION FINANCE CORPORATION, an intervenor herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, both on the law and on the facts, from an order of this Court made herein by Hon. Robert A. Inch, dated November 6,

568 1939 and entered in the office of the Clerk of this Court on the 6th day of November, 1939, whereby, among other things, the report of Special Master James G. Moore dated December 12, 1938 and filed herein was in all respects confirmed and allowances to the corporate trustees and their attorneys were fixed; and that said Reconstruction Finance Corporation hereby appeals from each and every part of said order as well as from the whole thereof, except that portion of said order designated Paragraph "(1)" thereof which confirms the report of said Special Master dated November 30, 1938 insofar as said report relates to the application of the Trustees of New York Investors, Inc. for an allowance and except that portion of said order designated Paragraph "(27)" thereof by which the Court reserved jurisdiction to give such authorizations and directions as might be necessary to carry out said order and to make effective the consummation of the Amended Plans of Reorganization, and except those portions of said order which in certain respects deferred the payments of such compensation to the corporate trustees and their counsel.

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Dated, New York, N. Y.
November 27, 1939.

Yours, etc.,

JAMES F. DEALY
Attorney for Reconstruction Finance
Corporation, Intervenor.

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Office and Post Office Address:

30 Broad Street,
New York, N. Y.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 30, 1939."

Order to show cause of District Court on motion by Prudence-Bonds Corporation for leave to appeal from order of Nov. 6, 1939.

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**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

Upon the annexed petition of PRUDENCE-BONDS CORPORATION, the New Corporation formed pursuant to the Plans of Reorganization approved and confirmed in the above entitled proceedings, duly verified the 8th day of November, 1939, and upon all the papers filed and proceedings heretofore had herein,

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LET the Debtor and all intervenors, applicants for allowances herein and persons interested in the above entitled proceedings as creditors or stockholders of the Debtor herein or otherwise, or their respective attorneys appearing herein, show cause before me at a Stated Term of this Court, to be held in Room 312, at the United States Court House, at the corner of Washington and Johnson Streets, in the Borough of Brooklyn, City and State of New York, on the 17th day of November, 1939, at two o'clock in the afternoon of said day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein, granting leave to your petitioner to appeal from the order made and entered herein on November 6, 1939, and described in paragraph "33" of said petition, and for such other and further relief as may be just and proper in the premises.

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Sufficient cause appearing therefor, LET service of this order and the petition upon which it was granted, by service of copies thereof, personally or by mail, upon the Debtor, the Trustees of the Debtor, and all intervenors and appli-

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cants for allowances herein, or upon their respective attorneys appearing herein, on or before the 13th day of November, 1939, be deemed sufficient service and notice of this application.

Dated: Brooklyn, N. Y., November 8, 1939.

ROBERT A. INCH
U. S. D. J. E. D. N. Y.

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**Petition of Prudence-Bonds Corporation for leave to appeal
from order of Nov. 6, 1939.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

*To the Honorable the Judges of the United States District
Court for the Eastern District of New York:*

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The petition of PRUDENCE-BONDS CORPORATION, respectfully shows:

1. That your petitioner is a domestic corporation duly organized under the Stock Corporation Law and Section 9(b) of the General Corporation Law of the State of New York, and is the New Corporation formed pursuant to the Amended Plans of Reorganization, approved and confirmed in the above entitled proceedings.

2. Upon information and belief, that on June 29, 1934, the Debtor filed its petition for reorganization under Sec-

tion 77B of the Bankruptcy Act; that by order made and entered herein on the same day said petition was approved as properly filed and Charles H. Kelby and Clifford S. Kelsey were appointed Temporary Trustees of the Debtor; that by order made and entered herein on July 31, 1934, the appointment of said Trustees was made Permanent and that said Trustees duly qualified and are still acting in that capacity.

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3. Upon information and belief, that at the time of filing its petition for reorganization, the Debtor had outstanding eighteen (18) separate Series of First Mortgage-Collateral Bonds, payable to the bearer or registered holder thereof, aggregating in principal amount the sum of approximately \$56,000,000.00; that each of said Series of Bonds was secured by a Trust Agreement made between the Debtor and a Bank or Trust Company, under which mortgages and mortgage bonds and other securities were pledged by the Debtor for the equal and pro rata benefit and security of the holders of said bonds, which securities constitute the collateral underlying said Series of Bonds, and that the names of the Corporate Trustees or Successor Corporate Trustees at the time said proceedings were instituted and the respective dates of said Trust Agreements are as follows:

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	<i>Series</i>	<i>Trust Agreement dated</i>		<i>Corporate Trustee</i>
580	A	January	15, 1920	Guaranty Trust Company of New York
	AA	August	1, 1922	City Bank Farmers Trust Company
	Third	October	1, 1924	City Bank Farmers Trust Company
	Fourth	October	15, 1924	City Bank Farmers Trust Company
	Fifth	April	1, 1925	President & Directors of The Manhattan Company
	Sixth	July	1, 1925	Central Hanover Bank and Trust Company
581	Seventh	October	1, 1925	City Bank Farmers Trust Company
	Eighth	March	1, 1927	Brooklyn Trust Company
	Ninth	March	1, 1927	President & Directors of The Manhattan Company
	Tenth	May	1, 1927	State Street Trust Company
	Eleventh	December	1, 1927	Chicago Title & Trust Company
	Twelfth	February	1, 1928	Manufacturers Trust Company
	Thirteenth	June	1, 1928	Manufacturers Trust Company
582	Fourteenth	September	15, 1928	The Chase National Bank of The City of New York
	Fifteenth	October	1, 1928	Chemical Bank & Trust Company
	Sixteenth	February	1, 1929	The Marine Midland Trust Company of New York
	Seventeenth	August	1, 1929	City Bank Farmers Trust Company
	Eighteenth	February	2, 1931	Central Hanover Bank and Trust Company

4. Upon information and belief that at the time of filing its petition for reorganization, the Debtor also had outstanding an issue of Mortgage Participation Certificates known as the Seneca Issue. 583

5. Upon information and belief, that the outstanding bonds of said eighteen (18) Series of Bonds, are held by approximately 35,000 bondholders residing in the State of New York, and elsewhere in many parts of the United States and in foreign countries.

6. Upon information and belief, that by order made and entered herein on March 11, 1936, an Amended Plan of Reorganization for the Debtor's Seneca Issue of Mortgage Participation Certificates was approved and confirmed. 584

7. Upon information and belief, that by order made and entered herein on May 6, 1936, an Amended Plan of Reorganization for Prudence-Bonds, Fifteenth Series was approved and confirmed.

8. Upon information and belief, that by order made and entered herein on April 27, 1937, this Court found, that the Debtor herein was insolvent and that in respect of each of the eighteen (18) Series of Bonds, the fair value of the collateral pledged to secure each Series was less than the principal amount of the outstanding bonds and accrued unpaid interest thereon and that the Debtor, its stockholders and general creditors have no equity in the pledged collateral in any Series of Bonds. 585

9. Upon information and belief, that by eighteen (18) orders made and entered herein, on January 18, 1938, Amended Plans of Reorganization for Prudence-Bonds, Series A, Series AA, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Sixteenth, Seventeenth and Eighteenth Series and a so-called Amended General Plan of Reorganization, were each approved and confirmed.

586 10. Upon information and belief, that the so-called Amended General Plan of Reorganization, provides, in part, for the formation of a New Corporation in accordance with Section 9(b) of the General Corporation Law of the State of New York; that all of the capital stock of such New Corporation be deposited under and subject to a Voting Trust Agreement; that the Voting Trustees be appointed by this Court and for distribution of all Voting Trust Certificates or Voting Trust Scrip, pro rata, to the holders of bonds of the eighteen (18) Series of Bonds issued by the Debtor.

587 11. Upon information and belief, that in accordance with the Amended Plans of Reorganization approved and confirmed as aforesaid, your petitioner, the New Corporation provided for by the so-called Amended General Plan of Reorganization, was organized under the Stock Corporation Law and Section 9(b) of the General Corporation Law of the State of New York and that its certificate of incorporation approved by this Court, was filed in the office of the Secretary of State, Albany, N. Y., on February 4, 1938.

588 12. Upon information and belief, that pursuant to the above mentioned orders, dated March 11, 1936, May 6, 1936 and January 18, 1938, the supervision of the consummation of said Amended Plans of Reorganization and the formation of the New Corporation to be organized pursuant thereto, was referred to James G. Moore, Esq., as Special Master, to hear and report with his opinion thereon.

13. Upon information and belief, that Special Master James G. Moore, filed herein an Intermediate Report, dated March 11, 1938, wherein he recommended that the Effective Date of the Amended Plans of Reorganization be fixed as March 1, 1938, and reported upon the status of the bonds of each Series, cash on hand in the various Trust Funds, the amount to be set aside for fees and expenses in con-

nection with these proceedings and the amounts to be paid to bondholders as of the Effective Date of the Said Plans. Said Report is hereby made a part hereof. 589

14. Upon information and belief, that by order made and entered herein on April 5, 1938, the said Intermediate Report of the Special Master, dated March 11, 1938, was approved and confirmed and funds reserved to pay reorganization expenses or allowances were directed to be turned over to your petitioner.

15. Upon information and belief, that by order made and entered herein on April 27, 1938, the Debtor and its Reorganization Trustees were authorized and directed to assign, transfer and convey to your petitioner, all of their right, title and interest in and to all the real and personal property, comprising or assigned, deposited or pledged to secure each and all of the eighteen (18) Series of Bonds issued by the Debtor and the Seneca Issue of Mortgage Participation Certificates of the Debtor, and that instruments of conveyance and assignment covering said property, have been executed and acknowledged by the Debtor and its Reorganization Trustees and delivered to your petitioner as of March 1, 1938. 590

16. Upon information and belief, that the collateral underlying the eighteen (18) Series of Bonds issued by the Debtor, is subject to the lien of Supplemental Trust Agreements approved by this Court, and includes among other property, bonds of various Series of said eighteen (18) Series of Bonds, in the original face principal amount of approximately \$1,600,000.00. 591

17. Upon information and belief, that by the above mentioned orders, dated March 11, 1936, May 6, 1936, the eighteen orders dated January 18, 1938, and also by orders made and entered herein on July 21, 1937, June 3, 1938 and June 6, 1938, there was referred to James G. Moore, Esq., as Special Master, the consideration of the persons or

592 corporations to whom allowances for services or expenses should be made under the Plans of Reorganization confirmed herein and the provisions of Section 77B of the Bankruptcy Act, for written report and recommendation with his opinion thereon; that thereafter, approximately sixty-one (61) applications for allowances for services and disbursements in the aggregate total sum of approximately \$2,887,000.00 were filed with, and hearings thereon held before, said Special Master.

593 18. Upon information and belief, that the only objections filed with the Special Master to the said applications for allowances were the objections of your petitioner, Reconstruction Finance Corporation and the Trustees of The Prudence Company, Inc., Debtor. The objections of your petitioner, verified August 22, 1938, which are on file herein, are hereby made a part hereof.

594 19. Upon information and belief, that the Trustees of the Debtor herein, did not oppose or file objections to said applications for allowances, for the reason that, prior to the filing of the applications for allowances they had executed and delivered the instruments of conveyance and assignment referred to above in paragraph "15" hereof and because in the matter of allowances, they took the position they had been superceded by your petitioner which had evidenced its intention of analyzing the applications for allowances and filing objections thereto.

20. Upon information and belief, that said Special Master filed herein an Intermediate Report, dated November 30, 1938, wherein he recommended that allowances, for services and disbursements, be granted, in the aggregate sum of \$462,014.08, to a number of the applicants for allowances, but reserved for future determination the applications for allowances filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective attorneys appearing in these reorganization proceedings. Said Report is hereby made a part hereof.

21. Upon information and belief, that by a notice of motion, dated December 1, 1938, returnable December 9, 1938, Prudence Securities Advisory Group, an intervenor herein, made an application herein, for an order passing upon the said Intermediate Report of the Special Master, taking such action thereon as this Court might deem advisable and granting such other and further relief, as to this Court might seem just and proper. 595

22. Upon information and belief, that the said motion of Prudence Securities Advisory Group was adjourned from December 9, 1938 to December 16, 1938, so as to await the coming in of the Special Master's Report on the remaining applications for allowances then pending before him.

23. Upon information and belief, that thereafter, said Special Master filed herein an Intermediate Report, dated December 12, 1938, wherein he recommended that allowances, for services and disbursements in the aggregate sum of \$626,862.41, be granted to the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective attorneys appearing herein, and gave written notice to the parties in interest, that said Report would be handed up to the District Judge in charge of these proceedings on December 16, 1938, for consideration in conjunction with his Report, dated November 30, 1938, and that a hearing upon said two (2) Reports was held before this Court on December 16, 1938. Said Report is hereby made a part hereof. 596

24. Upon information and belief, that all allowances and expenses of these reorganization proceedings are payable out of cash in the Trust Funds securing the eighteen (18) Series of Bonds issued by the Debtor, except allowances of \$15,000.00 for services and disbursements in connection with the Plan of Reorganization for the Debtor's Seneca Issue of Mortgage Participation Certificates. 597

25. That your petitioner filed objections and exceptions to the confirmation of the said Reports of the Special Mas-

598 ter, dated November 30, 1938 and December 12, 1938, upon the ground, among others, that the total allowances recommended by the Special Master in his said Reports, in the aggregate sum of \$1,088,876.49, plus all prior allowances granted in these reorganization proceedings, was excessive and unreasonable and beyond the ability of the Estate to pay. The said objections and exceptions of your petitioner are hereby made a part hereof.

26. Upon information and belief, that under date of February 1, 1939, Hon. Robert A. Inch, District Judge, handed down an opinion, ruling that the Special Master's Report of November 30, 1938, should be confirmed, granting allowances in the aggregate sum of \$19,500.00, in addition to the allowances recommended by the Special Master, in 599 said Report, totalling the sum of \$462,014.08, and reserving for future determination the application for an allowance of the sum of \$50,954.64, filed by the Trustees of New York Investors, Inc., which the Special Master in his Report, dated November 30, 1938, recommended be denied, and also reserving for future determination, the allowances recommended by the Special Master in his Report dated December 12, 1938, in the aggregate sum of \$626,862.41, for the above named eleven (11) Corporate Trustees and their respective attorneys appearing herein.

27. Upon information and belief, that in said opinion 600 dated February 1, 1939, this Court stated in part as follows:

"While this reorganization proceeding was commenced under Section 77B of the Bankruptcy Act (11 U. S. C. A., Section 207), the petition having been filed June 29, 1934, the new provisions of Chap. 10, Article 13, of the Chandler Act (11 U. S. C. A., Section 341 et seq.) can be applied as fairly and conveniently to these applications as they could be, had, the proceeding been started within three months of the effective date of the Act, to wit, June 22, 1938. I consider it practicable therefore to apply them."

28. Upon information and belief, that, thereafter, separate orders on allowances were made and entered herein, in the office of the Clerk of this Court, as follows: 601

(a) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.

(b) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07, were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements. 602

(c) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services.

(d) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96, were granted to Bondholders' Protective Committee, for Prudence-Bonds, Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblyn, Esqs., its attorneys herein, for services and disbursements.

(e) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services. 603

(f) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

(g) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bond-

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holders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(h) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

(i) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements.

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(j) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26, were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

(k) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services.

(l) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00, was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

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(m) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

(n) Order, dated February 21, 1939, whereby, among other things; (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys

herein, for services and disbursements; (3) an allowance in the sum of \$540.12 was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys, appearing herein, for allowances for services and disbursements, were held in abeyance for future determination. 607

(o) Order, dated February 21, 1939, which denied the application of your petitioner, Prudence-Bonds Corporation (New Corporation), for a re-argument of the application for the consideration of the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938. 608

29. That, thereafter, your petitioner duly applied to this Court, upon notice to all interested parties, for leave to appeal to the United States Circuit Court of Appeals for the Second Circuit, from the orders described in the preceding paragraph and such application was duly granted by order made and entered herein on March 15, 1939. Said order and the papers upon which it was granted, which are on file herein, are hereby made a part hereof.

30. That, thereafter, your petitioner duly appealed from said orders to the said United States Circuit Court of Appeals, and, upon information and belief, appeals from said orders were also taken by various other parties in interest. 609

31. Upon information and belief, that by its mandate filed herein August 15, 1939, the said United States Circuit Court of Appeals, duly reversed so much of the order of February 21, 1939, described in subdivision "(n)" of paragraph "28" above, as deferred consideration of the applications for allowances filed by the above named eleven (11) Corporate Trustees and their respective attorneys

610 appearing herein and remanded these proceedings to this Court for further proceedings in conformity with the said decision and mandate of the said United States Circuit Court of Appeals and that by order made and entered herein on September 18, 1939, the said mandate of the said United States Circuit Court of Appeals, was made the order of this Court.

611 32. Upon information and belief, that under date of October 26, 1939, Hon. Robert A. Inch, District Judge, handed down an opinion herein, ruling that the application of the Trustees of New York Investors, Inc., for an allowance, should be denied and that the Special Master's Report of December 12, 1938, recommending allowances for the said eleven (11) Corporate Trustees and their respective attorneys appearing herein, should be confirmed.

33. Upon information and belief, that by order made and entered herein on November 6, 1939, it was adjudged and decreed, that the application of the Trustees of New York Investors, Inc., for an allowance be denied and that allowances be fixed for the said eleven (11) Corporate Trustees and their respective attorneys appearing herein, in the aggregate sum of \$626,097.20, as more specifically set forth in said order which is on file herein and hereby made a part hereof.

612 34. That your petitioner intends to appeal from the order described in the preceding paragraph, except such part thereof, as denies the application of the Trustees of New York Investors, Inc., for an allowance, and is advised by counsel, that in view of the provisions of the Chandler Act and the general orders in Bankruptcy, as amended effective February 13, 1939, and under all the facts and circumstances herein, petitioner may appeal from said order as a matter of right without obtaining leave of this Court. Petitioner, however, is further advised by counsel, that some question might be raised that leave of this Court should have been obtained to perfect petitioner's right to

appeal from the said order and your petitioner, therefore, makes this application for leave to take and prosecute such appeal. 613

35. That your petitioner verily believes, that under all the facts and circumstances herein, the granting of this application would be in the best interests of the bondholders and others interested in the Estate of the Debtor affected by said order.

36. That the reason an order to show cause is requested, is that petitioner desires to take and prosecute said appeal as expeditiously as possible.

37. That no previous application has been made for the relief herein requested. 614

WHEREFORE, your petitioner respectfully prays, that an order be made and entered herein, granting leave to your petitioner to appeal from the order described in paragraph "33" above; granting such other and further relief as may be proper in the premises and that an order to show cause in the form hereto annexed be granted.

Dated: New York, N. Y., November 8, 1939.

PRUDENCE-BONDS CORPORATION,

By: THOMAS W. STREETER
PRESIDENT.

CHARLES M. McCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation)
Office & P. O. Address,
100 East 42nd Street,
Borough of Manhattan,
New York, N. Y. 615

(Verified November 8, 1939.)

**616 Order granting Prudence-Bonds Corporation leave to appeal
from order of Nov. 6, 1939.**

**UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.**

[CAPTION]

617 A motion by an order to show cause signed by the Hon. Robert A. Inch and dated November 8, 1939, upon the petition of Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the above entitled proceedings, duly verified the 8th day of November, 1939, and upon the papers filed and the proceedings heretofore had herein, having duly come on to be heard before this Court on the 17th day of November, 1939, for an order granting leave to said petitioner to take and prosecute an appeal to the United States Circuit Court of Appeals for the Second Circuit from an order made and entered herein on November 6, 1939, whereby, among other things, the Report of Special Master James G. Moore, on allowances, dated December 12, 1938, was confirmed and allowances in the aggregate sum of \$626,097.20, were fixed for the eleven (11) Corporate Trustees of the eighteen (18) Series of bonds issued by the Debtor and for their respective attorneys appearing herein, and for such other and further relief as may be just and proper in the premises;

618

Now, upon reading and filing the said order to show cause, with proof of due service thereof upon the necessary parties to these proceedings as required by said order to show cause, and upon reading and filing the said petition of Prudence-Bonds Corporation, the New Corporation, duly verified the 8th day of November, 1939, in support of said motion, and no papers being filed in opposition thereto, and

after hearing Charles M. McCarty, Esq., attorney for Prudence-Bonds Corporation, the New Corporation, and James F. Dealy, Esq., attorney for Reconstruction Finance Corporation, in support of said motion, and no one appearing in opposition thereto, and upon the papers filed and the proceedings heretofore had herein, and due deliberation having been had thereon, it is 619

ORDERED, that the said motion be and hereby is, in all respects granted and that Prudence-Bonds Corporation, the New Corporation as aforesaid, be and it hereby is granted leave of this Court, to take and prosecute an appeal to the United States Circuit Court of Appeals for the Second Circuit, from all or any part of the said order made and entered herein on November 6, 1939. 620

Dated: Brooklyn, N. Y., November 20, 1939.

ROBERT A. INCH
U. S. D. J., E. D. N. Y.

Notice of appeal by Prudence-Bonds Corporation from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK. 621

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that Prudence-Bonds Corporation, the New Corporation formed pursuant to the Amended Plans of Reorganization approved and confirmed in the

622 above entitled proceedings, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from an order of this Court made in said proceedings by the Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of this Court on November 6, 1939, whereby, among other things, the Report of Special Master James G. Moore, on allowances, dated December 12, 1938, was confirmed and allowances in the aggregate sum of \$626,097.20 were fixed for the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and for their respective attorneys appearing herein, and that said Prudence-Bonds Corporation, hereby appeals from each and every part of said order as well as from the whole thereof, both on the law and on the facts, except those portions of said order set forth in the paragraphs thereof, designated "1" and "27" and except those portions of said order which in certain respects defer payment of the allowances fixed for the said Corporate Trustees and their respective attorneys appearing herein.

623

Dated: New York, N. Y., November 28, 1939.

Yours, etc.,

CHARLES M. McCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation)
Office & P. O. Address,
No. 100 East 42nd Street,
Borough of Manhattan,
New York, N. Y.

624

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 30, 1939."

Notice of appeal by Brooklyn Trust Company, et al., from 625
order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that Brooklyn Trust Company and 626
Cullen & Dykman hereby appeal to the United States Cir-
cuit Court of Appeals for the Second Circuit from an order
of this court made herein by Honorable Robert A. Inch,
dated November 6, 1939, and entered in the office of the
Clerk of this court on the 6th day of November, 1939,
whereby, among other things, the report of Special Master
James G. Moore, dated December 12, 1938, and filed herein,
was in all respects approved and confirmed, and which
order, among other things, fixes the compensation of cer-
tain corporate trustees and their counsel and in certain
respects defers the payment of such compensation; and
that said Brooklyn Trust Company and said Cullen & Dyk-
man hereby appeal from each and every part of said order 627
as well as from the whole thereof, except that portion of
said order designated "1" thereof, which confirms the re-
port of said Special Master dated November 30, 1938, in

628 so far as said report relates to the application of the trustees of New York Investors, Inc., for an allowance.

Dated: Brooklyn, N. Y., November 8, 1939.

Yours, &c.,

CULLEN & DYKMAN,
Pro se and as Attorneys for Brooklyn
Trust Company

Office & P. O. Address:
215 Montague Street,
Borough of Brooklyn,
City of New York.

629 The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 9, 1930."

Notice of appeal by Charles H. Kelby, as Trustee of New York Investors, Inc. from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

630

SIRS:

PLEASE TAKE NOTICE that Charles H. Kelby, as Trustee of New York Investors, Inc. in liquidation under subdivision (k) of Section 77B of the Bankruptcy Act (successor in interest to Charles H. Kelby and Clifford S. Kelsey, as Trustees of New York Investors, Inc. in proceedings for reorganization under Section 77B of the Bankruptcy Act) hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from that portion of an order

of this Court made by the Honorable Robert A. Inch, District Judge, entered in the office of the Clerk of this Court on the 6th day of November, 1939, which is designated "1" thereof, whereby among other things the report of Special Master James G. Moore dated November 30, 1938 and filed herein was in all respects approved and confirmed in so far as said Report relates to the application of the Trustees of New York Investors, Inc. for an allowance of reimbursement for expenses; and which portion of said order denies said application of the Trustees of New York Investors, Inc.; and that said Charles H. Kelby as Trustee of New York Investors, Inc., hereby appeals, both on the law and on the facts, from each and every part, as well as from the whole, of said portion of said order designated "1" thereof. 631

Dated: November 14, 1939. 632

Yours, etc.,

FRUEAUFF, BURNS, O'BRIEN & RUCH,
Attorneys for Charles H. Kelby as
Trustee of New York Investors, Inc.

Office and P. O. Address:

No. 60 Wall Street
Borough of Manhattan,
City of New York

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 14, 1939." 633

634 Notice of appeal by City Bank Farmers Trust Company,
et al., from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

635

PLEASE TAKE NOTICE that City Bank Farmers Trust Company and Delafield, Marsh, Porter & Hope hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from an order of this court made herein by Honorable Robert A. Inch, dated November 6, 1939, and entered in the office of the Clerk of this Court on the 6th day of November, 1939, whereby, among other things, the report of Special Master James G. Moore, dated December 12, 1938, and filed herein, was approved and confirmed, and which order, among other things, fixes the compensation of certain corporate trustees and their counsel and in certain respects defers the payment of such compensation; and that said

636 City Bank Farmers Trust Company and said Delafield, Marsh, Porter & Hope hereby appeal from each and every part of said order as well as from the whole thereof, except that portion of said order designated "1" thereof, which confirms the report of said Special Master dated November 30, 1938, in so far as said report relates to the application

of the trustees of New York Investors, Inc., for an allowance.

637

Dated: New York, N. Y., November 14, 1939.

Yours, etc.,

DELAFIELD, MARSH, PORTER & HOPE
Pro se and as Attorneys for City Bank
Farmers Trust Company
Office and P. O. Address:
20 Exchange Place
Borough of Manhattan
City of New York

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office, U. S. District Court E. D. N. Y. November 16, 1939."

638

Notice of appeal by The Chase National Bank, et al., from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

639

PLEASE TAKE NOTICE that The Chase National Bank of the City of New York and Milbank, Tweed & Hope hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from an order of this court made herein by Honorable Robert A. Inch, dated November 6, 1939, and entered in the office of the Clerk of this Court on the 6th day of November, 1939, whereby, among other things, the report of Special Master James G. Moore, dated December 12, 1938, and filed herein, was approved and confirmed, and which order, among other things, fixes the compensation of

640 certain corporate trustees and their counsel and in certain respects defers the payment of such compensation; and that said The Chase National Bank of the City of New York and Milbank, Tweed & Hope hereby appeal from each and every part of said order as well as from the whole thereof, except that portion of said order designated "1" thereof, which confirms the report of said Special Master dated November 30, 1938, in so far as said report relates to the application of the trustees of New York Investors, Inc., for an allowance.

Dated: New York, N. Y., November 17, 1939.

Yours, etc.,

MILBANK, TWEED & HOPE,

641

Pro see and as Attorneys for The Chase National Bank of the City of New York,

Office and P. O. Address:
15 Broad Street,
Borough of Manhattan,
City of New York.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 18, 1939."

642

Notice of appeal by Manufacturers Trust Company, et al.,
from order of Nov. 6, 1939. .

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that MANUFACTURERS TRUST COMPANY and NEWMAN & BISCO hereby appeal to the United States

Circuit Court of Appeals for the Second Circuit from an order of this Court made herein by Honorable Robert A. Inch, dated November 6, 1939, and entered in the office of the Clerk of this Court on the 6th day of November, 1939, whereby, among other things, the report of Special Master James G. Moore, dated December 12, 1938, and filed herein, was in all respects approved and confirmed, and which order, among other things, fixes the compensation of certain corporate trustees and their counsel and in certain respects defers the payment of such compensation; and that said Manufacturers Trust Company and said Newman & Bisco hereby appeal from each and every part of said order as well as from the whole thereof, except paragraph "1" of said order, which confirms the report of said Special Master dated November 30, 1938, insofar as said report relates to the application of the Trustees of New York Investors, Inc., for an allowance.

643

644

Dated: New York, November 15, 1939.

Yours, etc.,

NEWMAN & BISCO,

Pro se and as attorneys for Manufacturers
Trust Company,

29 Broadway

Borough of Manhattan

City of New York

645

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 21, 1939."

646 Notice of appeal by President and Directors of the Manhattan Company from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

647 PLEASE TAKE NOTICE that President and Directors of the Manhattan Company as Trustee of Prudence-Bonds FIFTH and NINTH Series hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the following portions of an order entered in the office of the Clerk of this Court on November 6, 1939; each and every part of paragraph 8, and so much of paragraphs 2 and 26 as confirmed the report of Special Master James G. Moore dated December 12, 1939, fixing the allowance of President and Directors of the Manhattan Company as Trustee of Prudence-Bonds FIFTH and NINTH series and deferring payment thereof, and from each and every part of said order in so far as it affects the allowance of President and Directors of the Manhattan Company as Trustee of Prudence-Bonds FIFTH and NINTH series, and the time of payment thereof, and only from those parts of said order.
New York, N. Y., November 20, 1939.

Yours, etc.,

648

MACLAY, LYETH & WILLIAMS

Attorneys for President and Directors of
the Manhattan Company as Trustee of
Prudence-Bonds FIFTH and NINTH
series

Office & P. O. Address

55 Liberty Street,
New York, N. Y.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 24, 1939."

Notice of appeal by Simpson, Thacher & Bartlett, *et al.*, 649
from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that Simpson Thacher & Bartlett 650
and Sonnenschein, Berkson, Lautmann, Levinson & Morse
hereby appeal to the United States Circuit Court of Appeals
for the Second Circuit from an order of this Court made
herein by Honorable Robert A. Inch, dated November 6,
1939, and entered in the office of the Clerk of this Court on
the 6th day of November, 1939, whereby, among other
things, the report of Special Master James G. Moore, dated
December 12, 1938, and filed herein, was approved and con-
firmed, and which order, among other things, fixes the com-
pensation of certain corporate trustees and their counsel,
and in certain respects defers the payment of such com-
pensation; and that said Simpson Thacher & Bartlett and 651
Sonnenschein, Berkson, Lautmann, Levinson & Morse here-
by appeal from each and every part of said order as well
as from the whole thereof, except that portion of said order
designated "1" thereof, which confirms the report of said
Special Master dated November 30, 1938, in so far as said

652 report relates to the application of the trustees of New York Investors, Inc. for an allowance.

Dated: New York, N. Y., November 22, 1939.

Yours, etc.,

SIMPSON THACHER & BARTLETT,

Pro se,

Office and Post Office Address,

120 Broadway,

New York, N. Y.

SONNENSCHN, BERESON, LAUTMANN,

LEVINSON & MORSE,

Pro se,

Office and Post Office Address,

77 West Washington Street,

Chicago, Illinois.

653

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. December 6, 1939."

Notice of appeal by Carter, Ledyard & Milburn from order of Nov. 6, 1939.

654

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that Carter, Ledyard & Milburn, pro se, hereby appeal to the United States Circuit Court of

Appeals for the Second Circuit from the following portions
of an order of this Court dated November 6, 1939, and
entered in the office of the Clerk of this Court on November
6, 1939, which, among other things, confirmed the report
of Special Master James G. Moore, dated December 12,
1938, and fixed allowances of certain corporate trustees and
their attorneys herein and deferred in certain respects the
payment of such allowances or parts thereof: 655

That portion of said order designated "2" insofar as it
relates to an allowance to Carter, Ledyard & Milburn; that
portion of said order designated "9" and that portion of
said order designated "26"; and that Carter, Ledyard &
Milburn, hereby appeal from each and every part of said
order relating to an allowance to Carter, Ledyard & Mil- 656
burn and the time of payment thereof.

Dated: New York, N. Y., November 16, 1939.

CARTER, LEDYARD & MILBURN,
Pro se,

Office & P. O. Address:
No. 2 Wall Street,
Borough of Manhattan,
City of New York.

The foregoing Notice of Appeal is addressed to all parties
in interest and stamped "Filed in Clerk's Office U. S.
District Court E. D. N. Y. November 22, 1939." 657

658 Notice of appeal by Larkin, Rathbone & Perry from order
of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

659

PLEASE TAKE NOTICE that Larkin, Rathbone & Perry hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from that portion of an order of this Court made by the Honorable Robert A. Inch, District Judge, entered in the office of the Clerk of this Court on the 6th day of November, 1939, designated as paragraph "2" thereof in so far as it approves and confirms that portion of the report of Special Master James G. Moore, dated December 12, 1938, and filed herein, which allocates and segregates as "LIENS UNDER TRUST AGREEMENTS" a certain portion of the sum recommended as compensation for certain services rendered by Larkin, Rathbone & Perry, from that part of the paragraph of said order designated "11" which withholds payment of a certain portion of the sum

660

allowed to Larkin, Rathbone & Perry as compensation for their services, to-wit, the sum of \$40,000, pending disposition of the proceedings herein for the judicial settlement and approval of the accounts filed herein by Central Hanover Bank and Trust Company, as Trustee of Prudence Bonds, Sixth and Eighteenth Series, or until further order of this Court, and from that portion of said order designated as paragraph "26" thereof; and that said Larkin, Rathbone & Perry hereby appeals, both on the law and on

the facts, from each and every part, as well as from the whole, of the aforesaid portions of said order. 661

Dated: New York, N. Y., November 20, 1939.

Yours, etc.,

LARKIN, RATHBONE & PERRY,

Pro se,

Office and Post Office Address:

70 Broadway,

City of Manhattan,

City of New York.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 21, 1939." 662

Notice of appeal by Marine Midland Trust Co., et al., from order of Nov. 6, 1939.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that The Marine Midland Trust Company of New York, as Trustee of Prudence-Bonds, Sixteenth Series, intervenor, and Sullivan & Cromwell hereby appeal to the United States Circuit Court of Appeals for

664, the Second Circuit from an order of this Court made herein by Honorable Robert A. Inch, dated November 6, 1939, and entered in the office of the Clerk of this Court on the 6th day of November, 1939, whereby, among other things, the report of Special Master James G. Moore, dated December 12, 1938, and filed herein, was approved and confirmed, and which order, among other things, fixes the compensation of certain corporate trustees and their counsel and in certain respects defers the payment of such compensation; and that said The Marine Midland Trust Company of New York and said Sullivan & Cromwell hereby appeal from each and every part of said order as well as from the whole thereof, except that portion of said order designated "1" thereof, which confirms the report of said Special Master dated November 30, 1938, in so far as said report relates to the application of the trustees of New York Investors, Inc., for an allowance.

665

Dated New York, November 28, 1939.

Yours, etc.,

SULLIVAN & CROMWELL,

Pro se and as attorneys for The Marine
Midland Trust Company of New
York, as Trustee of Prudence-Bonds,
Sixteenth Series, intervenor,

666

48 Wall Street,
New York, N. Y.

The foregoing Notice of Appeal is addressed to all parties in interest and stamped "Filed in Clerk's Office U. S. District Court E. D. N. Y. November 30, 1939."

**PROCEEDINGS IN THE CIRCUIT COURT
OF APPEALS**

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Order to show cause in the C. C. A. 2d on motion by Prudence-Bonds Corporation for consolidation of appeals, etc.

667

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

[CAPTION]

Upon the annexed petition of PRUDENCE-BONDS CORPORATION (New Corporation), duly verified the 16th day of March, 1939, and this Court being fully advised, it is

ORDERED, that the Debtor, the Trustees of the Debtor, and all intervenors and applicants for allowances in the above entitled proceedings, or their respective attorneys appearing herein, show cause, if any there be, before this Court, at the United States Courthouse, Foley Square, in the Borough of Manhattan, City and State of New York, in Room 1705 thereof, on the 20th day of March, 1939, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made herein consolidating, for all purposes, the appeals of petitioner, Prudence-Bonds Corporation (New Corporation) from the orders described in paragraph "25" of said petition, as well as the appeals described in said petition, taken by Reconstruction Finance Corporation, directing that one transcript of record covering all of said appeals be filed, and directing the Clerk of this Court to accept such transcript of record, consisting of the original papers upon which said appeals are to be heard, when duly certified by the Clerk of the United States District Court for the Eastern District of New York, and granting such other and further relief as may be just and proper in the premises; and it is further

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ORDERED, that service of this order and the petition upon which it is granted, by service of copies thereof, by mail,

670 upon the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in these proceedings, or upon their respective attorneys or solicitors appearing herein, on or before the 16th day of March, 1939, shall be deemed sufficient.

Dated: New York, N. Y., March 16, 1939.

HARRIE B. CHASE
United States Circuit Judge for
the Second Circuit.

671

**Petition of Prudence-Bonds Corporation on motion to
consolidate appeals, etc.**

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[CAPTION]

672 *To the Honorable the Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

The petition of PRUDENCE-BONDS CORPORATION, respectfully shows:

1. That your petitioner is a domestic corporation duly organized under the Stock Corporation Law and Section 9(b) of the General Corporation Law of the State of New York, and is the New Corporation formed pursuant to the Amended Plans of Reorganization, approved and con-

filed in the above entitled proceedings, pending in the United States District Court, for the Eastern District of New York. 673

2. Upon information and belief, that on June 29, 1934, the Debtor filed its petition in said District Court for reorganization under Section 77B of the Bankruptcy Act; that by order made and entered on the same day said petition was approved as properly filed and Charles H. Kelby and Clifford S. Kelsey were appointed Temporary Trustees of the Debtor; that by order made and entered on July 31, 1934, the appointment of said Trustees was made Permanent and that said Trustees duly qualified and are still acting in that capacity. 674

3. Upon information and belief, that at the time of filing its petition for reorganization, the Debtor had outstanding eighteen (18) separate Series of First Mortgage-Collateral Bonds, payable to the bearer or registered holder thereof, aggregating in principal amount the sum of approximately \$56,000,000.00; that each of said Series of Bonds was secured by a Trust Agreement made between the Debtor and a Bank or Trust Company, under which mortgages and mortgage bonds and other securities were pledged by the Debtor for the equal and pro rata benefit and security of the holders of said bonds, which securities constitute the collateral underlying said Series of Bonds, and that the names of the Corporate Trustees or Successor Corporate Trustees at the time said proceedings were instituted and the respective dates of said Trust Agreements are as follows: 675

	<i>Series</i>	<i>Trust Agreement dated</i>		<i>Corporate Trustee</i>
676	A	January	15, 1920	Guaranty Trust Company of New York
	AA	August	1, 1922	City Bank Farmers Trust Company
	Third	October	1, 1924	City Bank Farmers Trust Company
	Fourth	October	15, 1924	City Bank Farmers Trust Company
	Fifth	April	1, 1925	President & Directors of The Manhattan Company
	Sixth	July	1, 1925	Central Hanover Bank and Trust Company
677	Seventh	October	1, 1925	City Bank Farmers Trust Company
	Eighth	March	1, 1927	Brooklyn Trust Company
	Ninth	March	1, 1927	President & Directors of The Manhattan Company
	Tenth	May	1, 1927	State Street Trust Company
	Eleventh	December	1, 1927	Chicago Title & Trust Company
	Twelfth	February	1, 1928	Manufacturers Trust Company
	Thirteenth	June	1, 1928	Manufacturers Trust Company
678	Fourteenth	September	15, 1928	The Chase National Bank of the City of New York
	Fifteenth	October	1, 1928	Chemical Bank & Trust Company
	Sixteenth	February	1, 1929	The Marine Midland Trust Company of New York
	Seventeenth	August	1, 1929	City Bank Farmers Trust Company
	Eighteenth	February	2, 1931	Central Hanover Bank and Trust Company

4. Upon information and belief, that at the time of filing its petition for reorganization, the Debtor also had outstanding an issue of Mortgage Participation Certificates known as the Seneca Issue. 679

5. Upon information and belief, that the outstanding bonds of said eighteen (18) Series of Bonds, are held by approximately 35,000 bondholders residing in the State of New York, and elsewhere in many parts of the United States and in foreign countries.

6. Upon information and belief, that by order made and entered in said reorganization proceedings on March 11, 1936, an Amended Plan of Reorganization for the Debtor's Seneca Issue of Mortgage Participation Certificates was approved and confirmed. 680

7. Upon information and belief, that by order made and entered in said reorganization proceedings on May 6, 1936, an Amended Plan of Reorganization for Prudence-Bonds, Fifteenth Series was approved and confirmed.

8. Upon information and belief, that by order made and entered in said reorganization proceedings on April 27, 1937, the said District Court found, that the Debtor was insolvent and that in respect of each of the eighteen (18) Series of Bonds, the fair value of the collateral pledged to secure each Series is less than the principal amount of the outstanding bonds and accrued unpaid interest thereon and that the Debtor, its stockholders and general creditors have no equity in the pledged collateral in any Series of Bonds. 681

9. Upon information and belief, that by eighteen (18) orders made and entered in said reorganization proceedings, on January 18, 1938, Amended Plans of Reorganization for Prudence-Bonds, Series A, Series AA, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Sixteenth, Seventeenth and Eighteenth Series and a so-called Amended

682 General Plan of Reorganization, were each approved and confirmed.

10. Upon information and belief, that the so-called Amended General Plan of Reorganization, provides for the formation of a New Corporation in accordance with Section 9(b) of the General Corporation Law of the State of New York; that all of the capital stock of such New Corporation shall be deposited under and subject to a Voting Trust Agreement; that the Voting Trustees shall be appointed by the District Court and for the distribution of all Voting Trust Certificates or Voting Trust Scrip, pro rata, to the holders of bonds of the eighteen (18) Series of Bonds issued by the Debtor.

683

11. Upon information and belief, that in accordance with the Amended Plans of Reorganization approved and confirmed as aforesaid, your petitioner, the New Corporation provided for by the so-called Amended General Plan of Reorganization was organized under the Stock Corporation Law and Section 9(b) of the General Corporation Law of the State of New York and that its certificate of incorporation approved by the District Court, was filed in the office of the Secretary of State, Albany, N. Y., on February 4, 1938.

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12. Upon information and belief, that pursuant to the above mentioned orders, dated March 11, 1936, May 6, 1936 and January 18, 1938, the supervision of the consummation of said Amended Plans of Reorganization and the formation of the New Corporation to be organized pursuant thereto, was referred to James G. Moore, Esq., as Special Master, to hear and report with his opinion thereon.

13. Upon information and belief, that Special Master James G. Moore, filed an Intermediate Report in said reorganization proceedings, dated March 11, 1938, wherein he recommended that the Effective Date of the Amended Plans of Reorganization be fixed as March 1, 1938, and also

reported upon the status of the bonds of each Series, cash on hand in the various Trust Funds, the amount to be set aside for fees and expenses in connection with the reorganization proceedings and the amounts to be paid to bondholders as of the Effective Date of the said Plans. 685

14. Upon information and belief, that by order made and entered in said reorganization proceedings on April 5, 1938, the said Intermediate Report of the Special Master, dated March 11, 1938, was approved and confirmed and funds reserved to pay reorganization expenses or allowances were directed to be turned over to your petitioner.

15. Upon information and belief, that by order made and entered in said reorganization proceedings on April 27, 1938, the Debtor and its Reorganization Trustees were authorized and directed to assign, transfer and convey to your petitioner, all of their right, title and interest in and to all the real and personal property, comprising or assigned, deposited or pledged to secure each and all of the eighteen (18) Series of Bonds issued by the Debtor and the Seneca Issue of Mortgage Participation Certificates of the Debtor, and that instruments of conveyance and assignment covering said property, have been executed and acknowledged by the Debtor and its Reorganization Trustees and delivered to your petitioner as of March 1, 1938. 686

16. Upon information and belief, that the collateral underlying the eighteen (18) Series of Bonds issued by the Debtor, which collateral is now owned by your petitioner subject to the lien of Supplemental Trust Agreements approved by the District Court, includes among other property, bonds of various Series of said eighteen (18) Series of Bonds, in the original face principal amount of approximately \$1,600,000.00. 687

17. Upon information and belief, that by the above mentioned orders, dated March 11, 1936, May 6, 1936, the eighteen orders dated January 18, 1938, and also by orders

688 made and entered in said reorganization proceedings on July 21, 1937, June 3, 1938 and June 6, 1938, there was referred to James G. Moore, Esq., as Special Master, the consideration of the persons or corporations to whom allowances for services or expenses should be made under the Plans of Reorganization confirmed in said reorganization proceedings, and the provisions of Section 77B of the Bankruptcy Act, for written report and recommendation with his opinion thereon; that thereafter, approximately sixty-one (61) applications for allowances for services and disbursements were filed with, and hearings thereon held before, said Special Master and that your petitioner filed with said Special Master an answer and objections to the various applications for allowances.

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18. Upon information and belief, that said Special Master filed in said reorganization proceedings an Intermediate Report, dated November 30, 1938, wherein he recommended that allowances, for services and disbursements, be granted, in the aggregate sum of \$462,014.08, to a number of the applicants for allowances, but reserved for future determination the applications for allowances filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective attorneys appearing in these reorganization proceedings.

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19. Upon information and belief, that by a notice of motion, dated December 1, 1938, returnable December 9, 1938, Prudence Securities Advisory Group, an intervenor herein, made an application for an order passing upon the said Intermediate Report of the Special Master, taking such action thereon as the Court may deem advisable and granting such other and further relief, as to the Court might seem just and proper.

20. Upon information and belief, that the said motion of Prudence Securities Advisory Group was adjourned from December 9, 1938 to December 16, 1938, so as to await the coming in of the Special Master's Report on the re-

maining applications for allowances then pending before him.

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21. Upon information and belief, that thereafter, said Special Master filed in said reorganization proceedings an Intermediate Report, dated December 12, 1938, wherein he recommended that allowances, for services and disbursements in the aggregate sum of \$626,862.41, be granted to the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor, and their respective attorneys appearing in these reorganization proceedings, and gave written notice to the parties in interest, that said Report would be handed up to the District Judge in charge of these proceedings on December 16, 1938, for consideration in conjunction with his Report, dated November 30, 1938 and that a hearing upon said two (2) Reports was held before the District Judge on December 16, 1938.

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22: Upon information and belief, that all allowances and expenses of these reorganization proceedings are payable out of cash in the Trust Funds securing the eighteen (18) Series of Bonds issued by the Debtor, except allowances granted in the total sum of \$15,000.00 for services and disbursements in connection with the Plan of Reorganization for the Debtor's Seneca Issue of Mortgage Participation Certificates.

23. That your petitioner filed objections and exceptions to the confirmation of the said Reports of the Special Master, dated November 30, 1938 and December 12, 1938, upon the ground, among others, that the total allowances recommended by the Special Master in his said Reports, in the aggregate sum of \$1,088,876.49, plus all prior allowances granted in these reorganization proceedings, was excessive and unreasonable and beyond the ability of the Estate to pay.

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24. Upon information and belief, that under date of February 1, 1939, Hon. Robert A. Inch, District Judge,

694 handed down an opinion, confirming the Special Master's Report of November 30, 1938, granting allowances in the aggregate sum of \$19,500.00, in addition to the allowances recommended by the Special Master, in said Report, totalling the sum of \$411,059.44, and reserving for future determination the application for an allowance for disbursements of the sum of \$50,954.64, filed by the Trustees of New York Investors, Inc., which the Special Master in his Report, dated November 30, 1938, recommended be denied, and also reserving for future determination, the allowances recommended by the Special Master in his Report dated December 12, 1938, in the aggregate sum of \$626,862.41 for the above named eleven (11) Corporate Trustees and their respective attorneys appearing herein.

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25. Upon information and belief, that the District Judge ruled, that each party to whom an allowance had been awarded or denied might submit a separate order covering the particular application, involved but that there might be included in a single order the matters not covered by separate orders submitted by February 17, 1939, and that thereafter, separate orders on allowances were made in said reorganization proceedings by Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of the Eastern District Court, as follows:

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(a) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.

(b) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07, were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

(c) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum

of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services. 697

(d) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96, were granted to Bondholders' Protective Committee, for Prudence-Bonds, Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblin, Esqs., its attorneys herein, for services and disbursements.

(e) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

(f) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements. 698

(g) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(h) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services. 699

(i) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements.

(j) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26, were granted to Tenth Series Committee and

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Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

(k) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services.

(l) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00, was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

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(m) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

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(n) Order, dated February 21, 1939, whereby, among other things; (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12, was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination.

(o) Order, dated February 21, 1939, which denied the application of your petitioner, Prudence-Bonds Corporation (New Corporation), for a re-argument of the application for the consideration of the Reports of Spe-

cial Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938.

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26. That after application made by your petitioner, upon notice to all the interested parties, an order was made and entered in said reorganization proceedings on March 15, 1939, granting leave to your petitioner, to take and prosecute appeals to this Court, from any and all of the foregoing orders.

27. That your petitioner feeling aggrieved, has duly appealed both on the law and on the facts, from each and every order described in paragraph "25" above, by filing on March 15, 1939, in the office of the Clerk of the United States District Court, Eastern District of New York, a separate notice of appeal, with proof of service thereof by mail and a bond for costs, with respect to each of said orders and your petitioner verily believes, in view of all the facts and circumstances herein, that these appeals should be consolidated for all purposes, since the applications for allowances were considered jointly as well as separately by the Special Master and the District Court and the objections filed by your petitioner related to all as well as the separate applications. The orders appealed from and the papers upon which they were granted, are therefore interrelated, affect the same subject matter and constitute the record of the proceedings had before the District Court in respect of the applications for allowances herein.

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28. Upon information and belief, that Reconstruction Finance Corporation, an intervenor herein, and an objector to the applications for allowances, has also duly appealed from the orders described in paragraph "25" above, except the order described in subdivision "(o)" of said paragraph "25".

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29. Upon information and belief, that the relevant papers relating to said appeals, including the papers in support of the applications for allowances and the objections

706 and exceptions thereto, are very voluminous and comprise upwards of 500 separate filed papers, substantially all of which are a necessary part of the transcript of record on appeal from each of said fifteen (15) orders.

30. Upon information and belief, that Hon. Robert A. Inch, District Judge, in his above mentioned opinion, dated February 1, 1939, stated in part as follows:

707 "While this reorganization proceeding was commenced under Section 77B of the Bankruptcy Act (11 U. S. C. A., Section 207), the petition having been filed June 29, 1934, the new provisions of Chap. 10, Article 13, of the Chandler Act (11 U. S. C. A., Section et seq.) can be applied as fairly and conveniently to these applications as they could be, had the proceeding been started within three months of the effective date of the Act, to wit, June 22, 1938. I consider it practicable therefore to apply them."

31. That your petitioner is advised by counsel, that Section 250 of Chapter X of the Bankruptcy Act, as amended by the Chandler Act, provides, that appeals from orders granting allowances of compensation or reimbursement, "shall be summarily heard upon the original papers," and that it would be wholly impossible to have a separate and independent transcript of record on appeal of the original papers, in respect of the appeals from each of the orders described in paragraph "25" above.

708 32. That, in view of the number of orders appealed from and of the fact that it will be necessary to serve the papers upon this motion upon forty-two (42) separate attorneys or law firms affected thereby, some of whom have their offices outside the State of New York, and in view of the fact, that your petitioner desires to proceed with the prosecution of these appeals as expeditiously as possible, your petitioner respectfully prays, that an order to show cause be granted, bringing on this motion for a hearing on March 20, 1939 and providing, that service by mail, of a copy of said order and this petition, upon the Debtor, the Trustees

of the Debtor and all intervenors and applicants for allowances in the above entitled proceedings, or their respective attorneys appearing herein, shall be deemed sufficient.

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33. That no previous application has been made for the relief herein requested.

WHEREFORE, your petitioner respectfully prays, that an order be made herein consolidating, for all purposes, the appeals of your petitioner from the orders described in paragraph "25" above as well as the appeals hereinabove referred to taken by Reconstruction Finance Corporation, directing that one transcript of record covering all of said appeals be filed and directing the Clerk of this Court to accept such transcript of record, consisting of the original papers upon which said appeals are to be heard, when duly certified by the Clerk of the United States District Court for the Eastern District of New York, and granting such other and further relief as may be just and proper in the premises, and that an order to show cause in the form hereto annexed be granted.

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Dated: New York, N. Y., March 16, 1939.

PRUDENCE BONDS CORPORATION,

By: THOMAS W. STREETER.

President.

(Verified March 16, 1939.)

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712 **Note of Issue of Prudence-Bonds Corporation on motion to consolidate appeals, etc.**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

713 Motion by Prudence-Bonds Corporation (New Corporation) for an order consolidating for all purposes, appeals from fifteen (15) orders granting allowances, and made and entered in the above entitled proceedings, pending in the United States District Court, Eastern District of New York; directing that one transcript of record covering all of said appeals be filed, and directing the Clerk of this Court to accept such transcript of record, consisting of the original papers upon which said appeals are to be heard when duly certified by the Clerk of the Eastern District Court.

Motion returnable March 20, 1939, at 10:30 A. M.

Charles M. McCarty, 100 East 42nd Street, New York, N. Y. and E. Stanley Marks, 111 Duane Street, New York, N. Y., attorneys for Appellant, Prudence-Bonds Corporation (New Corporation) and for the motion.

714 The attorneys for the Appellees or other parties in interest and their respective attorneys, upon whom the motion papers were served are as follows:

The foregoing Note of Issue lists the names and addresses of attorneys for all parties in interest and is stamped "Filed March 17, 1939, United States Circuit Court of Appeals, Second Circuit, William Parker, Clerk."

Order to show cause in the C. C. A. 2d on motion by R. F. C. 715
for consolidation of appeals, etc.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

[CAPTION]

Upon the annexed affidavit of Jerome Thralls, duly sworn to the 16th day of March, 1939, and this Court being fully advised, it is

ORDERED, that the Debtor, the Trustees of the Debtor, and all intervenors and applicants for allowances in the above-entitled proceedings, or their respective attorneys appearing herein, show cause before this Court, at the United States Court House, Foley Square, in the Borough of Manhattan, City and State of New York, Room 1705 thereof, on the 20th day of March, 1939 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made herein consolidating for all purposes the appeals of Reconstruction Finance Corporation from the orders mentioned in paragraph "(9)" of said affidavit of Jerome Thralls duly sworn to the 16th day of March, 1939 upon which this order is based, as well as the appeals from all of said orders taken to this Court by the new Prudence-Bonds Corporation, together with the appeal taken by said Prudence-Bonds Corporation from the order entered in the above proceedings in the United States District Court, for the Eastern District of New York, dated February 21, 1939, which denied the motion of said Corporation for reargument of the application for consideration of the reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938; directing that one transcript of record covering all of said appeals be filed and directing the Clerk of this Court to

718 accept such transcript of record consisting of the original papers upon which the orders appealed from were based, when duly certified by the Clerk of the United States District Court for the Eastern District of New York, and why such other and further relief as may be just and proper in the premises should not be granted to said Reconstruction Finance Corporation; And sufficient cause appearing therefor, it is further

719 ORDERED, that service of this order and the affidavit upon which the same is based, by service of copies thereof, either personally or by mail, upon the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the above-entitled proceeding, or upon their respective attorneys or solicitors appearing in said proceedings, on this 16th day of March, 1939 at or before 11:50 P. M., shall be deemed good and sufficient service.

Dated, New York, N. Y., March 16, 1939.

HARRIE B. CHASE

U. S. Circuit Judge for the Second Circuit.

**Affidavit of Jerome Thralls in support of motion to
• consolidate appeals, etc.**

UNITED STATES CIRCUIT COURT OF APPEALS.

720

FOR THE SECOND CIRCUIT.

[CAPTION]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JEROME THRALLS, being duly sworn, deposes and says:

(1) I am the authorized Special Representative of Reconstruction Finance Corporation, duly charged by the

Board of Directors thereof with the protection of its interests in the above-entitled proceeding. Said Corporation is duly organized and existing under and pursuant to an Act of Congress approved January 22, 1932 and all of its stock is beneficially owned by the United States. It owns the entire outstanding stock of the Debtor herein, and was duly authorized to intervene generally in the proceedings in the District Court.

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(2) I am familiar with the proceedings had in the District Court in the above-entitled matter and make this affidavit in support of an application for an order consolidating for all purposes fourteen (14) appeals taken by Reconstruction Finance Corporation to this court from fourteen separate orders of the District Court granting allowances in said proceedings, as well as the appeals also taken from each of said orders by the Prudence-Bonds Corporation (New Corporation), and an additional appeal taken by said Prudence-Bonds Corporation from an order of the District Court denying its motion for reargument of the application for the consideration of the two reports of the Special Master in said proceedings, hereinafter referred to.

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(3) The fourteen separate orders appealed from were made and entered in accordance with an opinion, hereinafter referred to, filed by the District Judge in charge of the proceedings, after a hearing upon two reports of James G. Moore, Esq., Special Master, to whom there had been duly referred for written report and recommendation the matter of the persons and corporations to whom allowances for services or expenses should be made under the plans of reorganization confirmed in the proceeding and the provisions of Section 77B of the Bankruptcy Act.

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(4) Pursuant to the orders of reference numerous applications for allowances for services and disbursements were filed with said Special Master. The applications duly came on for hearing before him and in accordance with the pro-

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cedure adopted as authorized by the orders of reference, objections and proof in opposition to said applications, were filed in writing with the Special Master in the form of affidavits and verified answers. Reconstruction Finance Corporation, as an objector to substantially all of said applications for allowances, including those of applicants to whom allowances have been awarded by the orders appealed from, filed its objections and proof in support thereof by affidavits of this deponent duly sworn to August 20, 1938 and January 26, 1938. The only other objectors to the applications for general allowances herein were the Prudence-Bonds Corporation (the New Corporation organized pursuant to the plans of reorganization confirmed in the proceeding), and the 77B Trustees of The Prudence Company, Inc., a creditor in substantial amount.

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(5) It was the position of Reconstruction Finance Corporation as well as said Prudence-Bonds Corporation (New Corporation) that each of said applications for allowances must of necessity be considered in the light of the facts and allegations contained in the other applications and in the light of proof submitted by the objectors with respect to the conflicting claims of all applicants and the tremendous amount of inexcusable overlapping and duplication of services for which most of the applicants separately requested compensation in grossly excessive amounts.

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(6) The Special Master considered these applications and the proofs in opposition thereto and filed two intermediate reports thereon dated November 30, 1938 and December 12, 1938. By the first report he recommended allowances for services and disbursements in the sum of \$462,014.08 to applicants other than corporate trustees and their counsel and recommended that certain other applications be denied and reserved for future determination applications filed by all the corporate trustees of the Debtor's bond issues and their counsel. By his second report, the Special Master recommended that allowances, for services and dis-

bursements in the sum of \$626,862.41 be granted to the corporate trustees and their counsel.

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(7) These reports of the Special Master came on for consideration before Judge Inch on December 16, 1938, and the Reconstruction Finance Corporation and the New Prudence-Bonds Corporation appeared in opposition to the confirmation thereof.

(8) On February 1, 1939, Judge Inch filed an opinion applying the provisions of Chapter X, Article XIII, of the Chandler Act (11 U. S. C. A., Sec. 241 et seq) to these applications and approved with modifications the Special Master's Report of November 30, 1938. Judge Inch, when approving the Special Master's recommendations, increased the allowance to Samuel Silbiger, from \$1,000 to \$5,000 and awarded allowances to other applicants to whom the Special Master had recommended nothing should be paid. At the same time, Judge Inch reserved for future consideration the application of the 77B Trustees of New York Investors for reimbursement of \$50,954.64 expended by them under his own order for reorganization expenses in this matter. He further reserved consideration of the \$626,862.41 of allowances recommended by the Special Master's report of December 12, 1938, for the corporate trustees and their counsel. Notwithstanding the fact that all of these applications had been passed upon by the Special Master Judge Inch ruled that every applicant could submit an individual order with respect to his application.

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(9) Separate orders were thereafter made as follows:

(1) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05 were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.

(2) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,-

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786.07 were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

(3) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00 were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services.

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(4) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,201.96 were granted to Bondholders' Protective Committee, for Prudence-Bonds Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tamblyn, Esqs., its attorneys herein, for services and disbursements.

(5) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

(6) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19 was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

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(7) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78 were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(8) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00 was granted to Delafield, Marsh, Porter & Hope, Esqs., at-

torneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

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(9) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02 was granted to General Committee for Prudence Securities, for services and disbursements.

(10) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26 were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

(11) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00 was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee of Prudence Securities, for services.

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(12) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00 was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services.

(13) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67 was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

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(14) Order, dated February 21, 1939, whereby, among other things, (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7,500.00 were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12 was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust

736 Company, as Trustee of Prudence-Bonds Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination.

737 (10) Reconstruction Finance Corporation appealed to this Court from all of said orders. Separate notices of appeal with respect to each of these orders were duly filed in the office of the Clerk of the United States District Court for the Eastern District of New York on March 15, 1939, in accordance with the provisions of the Bankruptcy Act as amended, the Rules of Civil Procedure for the District Courts of the United States and the General Orders in Bankruptcy of the United States Supreme Court. In addition, Reconstruction Finance Corporation applied on notice to all interested parties for leave of the District Court to take and prosecute such appeals. This application was heard on the 14th day of March, 1939 and after argument it was in all respects granted and an order was duly made and entered in the office of the Clerk of the United States District Court for the Eastern District of New York on the 15th day of March, 1939.

738 (11) Upon information and belief, the New Prudence-Bonds Corporation also obtained leave from the District Court and has appealed to this Court from the aforesaid fourteen orders, as well as from an additional order dated February 21, 1939 made and entered in the proceedings in the District Court, which denied the application of said Prudence-Bonds Corporation for a reargument of its application for the consideration of the aforesaid two reports of the Special Master on allowances, dated November 30, 1938 and December 12, 1938.

(12) Deponent respectfully prays that all of said appeals be consolidated for all purposes and be heard and considered by this court as one appeal on one record and that appropriate directions be given to the Clerk of this Court with respect thereto. 739

(13) Among the reasons in deponent's opinion why these appeals should be consolidated and treated as one, are:

(a) These applications were considered jointly as well as separately by the Special Master and the proof submitted by objectors applied to all of them. In numerous instances, applicants claimed sole credit for provisions in and amendments to the plans as well as for many other accomplishments helpful to the reorganization. At the same time, other applicants have claimed credit for and have requested compensation for these accomplishments. It is impossible to evaluate the services of individual applicants without considering the claims of other applicants, and the overlapping and duplication of services conclusively shown by the proofs submitted by the objectors. 740

(b) Furthermore, as provided in Section 250 of Chapter X of the Bankruptcy Act as amended, these appeals must be heard summarily on the original papers. Upon information and belief, it would be impossible as a practical matter to have separate and independent transcripts of record on appeal consisting of the original papers in respect to these appeals. Deponent respectfully submits that but one set of original papers can be made up. 741

(c) Among the grounds of Reconstruction Finance Corporation's objections to the approval of the Special Master's reports were that he erred in recommending allowances totalling \$1,088,876.49 for the reason that such sum is grossly excessive, and are not justified. If the allowances recommended are paid, the total cost of the reorganization will exceed \$1,500,000 since \$350,651.79 has already been paid. This latter amount included the following:

742	Allowances to Special Master James G. Moore	\$73,100.00
	Interim allowances to 77B Trustees of the Debtor	40,000.00
	Interim allowance to attorney for 77B Trustees of the Debtor	50,000.00
	Reorganization expense paid by 77B Trustees of the Debtor out of Special Fund turned over to them pursuant to court orders	41,765.69
	New Corporation — on account of organization expenses	50,000.00
743	Allowance to Special Master MacDonald	1,500.00
	Allowances to individual attorneys or firms for services in connection with specific items of collateral	37,659.94
	Fees and expenses paid to corporate trustees or their attorneys out of the Trust Funds or from sources other than the Trust Funds, since inception of these proceedings	56,626.16
	Total	<u>\$350,651.79</u>

744

Reconstruction Finance Corporation also objected to the confirmation of said reports upon the grounds that no provision has been made for final allowance to Special Master Moore or for the payment of additional necessary initial expenses of the New Corporation, and that as shown by the facts set forth in its objections filed with the Special Master an over-all cost of not more than $1\frac{3}{4}$ to 2% of the bonds reorganized can be justified and that in order to restrict the costs and expenses of this reorganization to an amount consistent with costs in comparable reorganizations the total allowances under consideration herein should not exceed \$750,000.

(d) Deponent believes that in addition to committing grievous error in awarding the amounts in the aforesaid

fourteen (14) orders from which Reconstruction Finance Corporation has appealed, the District Court further erred in finally fixing and directing the payment of any of these general allowances while at the same time reserving consideration of other applications in substantial amounts. Deponent believes that before any allowances for general services in these proceedings can consistently be made, the total cost of the reorganization should be fixed and is advised that this position is supported by the recent decision of the Circuit Court of Appeals for the Seventh Circuit in the case of *In re Irving Austin Building Corp.*, decided November 3, 1938 and reported in C.C.H. Bankruptcy Service, Section 51426. The total allowances recommended by the Special Master plus the \$350,651.79 already granted and paid amount to almost \$1,500,000. While the court has reserved decision on a large number of these allowances, those already awarded are so excessive in amount as to indicate clearly that the total cost of this reorganization will be largely in excess of \$1,500,000 unless the allowances which have already been awarded are drastically reduced in amount. 745

(14) It will thus be seen that in addition to the contention that substantially all of the allowances made to individual applicants are excessive, appellants have raised questions with respect to each order which require that consideration be given to the total allowances made as well as to the indicated total cost of the reorganization which it is shown herein will be largely in excess of \$1,500,000. 746

(15) The reason why an order to show cause is requested is that it will be necessary to serve 42 separate attorneys or firms, some of whom are outside the state and deponent desires that this court direct that service of a copy of the order to show cause applied for and of this affidavit, may be made either personally or by mail within a time to be fixed therein. Reconstruction Finance Corporation also desires to have this application heard on the next motion day in order that it may promptly file the designation required by the Rules. 747

748 16. No previous application has been made for the relief herein requested.

749 Wherefore, deponent respectfully prays that an order in the form submitted herewith be made herein requiring the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the above-entitled proceeding or their respective attorneys appearing herein, to show cause at a time and place to be fixed in said order, why an order should not be made herein consolidating for all purposes the aforesaid appeals of Reconstruction Finance Corporation from the orders hereinabove referred to as well as the appeals hereinabove referred to, taken by the new Prudence-Bonds Corporation, directing that one transcript of record covering all of said appeals be filed and directing the Clerk of this Court to accept such transcript of record, consisting of the original papers upon which said appeals are to be heard, when duly certified by the Clerk of the United States District Court for the Eastern District of New York, and why such other and further relief as may be just and proper in the premises should not be granted to said Reconstruction Finance Corporation.

JEROME THRALLS

(Sworn to March 16, 1939.)

750 Note of Issue of R. F. C. on motion to consolidate appeals, etc.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

[CAPTION]

Motion of RECONSTRUCTION FINANCE CORPORATION, appellant, brought on by order to show cause dated March

16, 1939 made by Hon. Harrie B. Chase, United States Circuit Judge for the Second Circuit, returnable March 20, 1939, at 10:30 A.M. 751

The motion is for an order consolidating for all purposes the appeals taken by the appellant from fourteen (14) separate orders of the United States District Court for the Eastern District of New York, granting allowances in this proceeding for reorganization under the Bankruptcy Act, as well as the appeals taken from the same orders by the Prudence-Bonds Corporation, the New Corporation organized pursuant to the plan confirmed in the proceeding, and an additional appeal taken by said Prudence-Bonds Corporation from a further order of the District Court which denied its motion for a reargument of the motion, as a result of which the aforesaid fourteen orders were made. 752

The District Court applied the provisions of Chapter X, Article XIII of the Chandler Act (11 U. S. C. A., Secs. 241 et seq) to the applications for allowances involved on these appeals. The motion therefore also asks that the Clerk of this Court be directed to accept a transcript of record consisting of the original papers upon which the orders appealed from were based, as required by Sec. 250 of said Act, when duly certified by the District Court Clerk.

JAMES F. DEALY, Office & P. O. Address, No. 30 Broad Street, New York, N. Y., attorney for Reconstruction Finance Corporation, appellant and moving party.

The order to show cause directs that the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the proceedings or their respective attorneys show cause why the order applied for should not be made. 753

The foregoing note of issue is stamped "Filed March 17, 1939, U. S. Circuit Court of Appeals, Second Circuit, William Parkin, Clerk."

754 **Order consolidating appeals and directing they be heard on original papers.**

**UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.**

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House in the City of New York, on the 22nd day of March, one thousand nine hundred and thirty-nine.

Present:

755 **HON. LEARNED HAND,**
HON. CHARLES C. CLARK,
Circuit Judges.
HON. ROBERT P. PATTERSON,
District Judge.

[CAPTION]

A motion having been made herein by counsel for the Reconstruction Finance Corporation and Prudence-Bonds Corporation (New Corporation) to consolidate the appeals herein and hear the same upon the original papers of the District Court.

756 **Upon consideration thereof it is**

Ordered that said motions be and hereby are granted, without prejudice to a motion to dismiss said appeals.

WM. PARKIN,
Clerk.

Notice of Motion by Prudence-Bonds Corporation to consolidate appeal of Edward Endelman, and ano.

757

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION.]

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Charles M. McCarty, duly verified the 6th day of April, 1939, the undersigned will move this Court in the Courtroom thereof, in the United States Courthouse, Foley Square, in the Borough of Manhattan, City, County and State of New York, on the 10th day of April, 1939, at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order consolidating an appeal taken herein by Edward Endelman, Esq. and Jacob A. Freedman, Esq., by notice of appeal dated March 22, 1939, with the other appeals in this matter now pending in this Court, which have heretofore been consolidated by order of this Court made herein on March 22, 1939, and providing that any necessary additional papers on appeal be included in the consolidated transcript of record, consisting of the original papers, and granting such other and further relief as to this Court may seem just and proper in the premises.

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Dated: New York, N. Y., April 6, 1939.

Yours, etc.,

CHARLES M. MCCARTY,
Attorney for Prudence-Bonds
Corporation (New Corporation)

Office & P. O. Address,
No. 100 E. 42nd Street,
Borough of Manhattan,
New York, N. Y.

760 To:

EDWARD ENDELMAN, Esq., Pro se,
299 Broadway,
New York, N. Y.

JACOB A. FREEDMAN, Esq., Pro se,
32 Court Street,
Brooklyn, N. Y.

JAMES F. DEALY, Esq.,
Attorney for Reconstruction Finance
Corporation, intervenor.
30 Broad Street,
New York, N. Y.

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**Affidavit in support of motion to consolidate Endelman
appeals.**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

762 STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

CHARLES M. MCCARTY, being duly sworn, deposes and
says:

1. I am an attorney and counsellor at law duly admitted
to practice in this Court and in the above entitled reorgan-
ization proceedings, I am attorney for Prudence-Bonds Cor-
poration, the New Corporation formed pursuant to the
Amended Plans of Reorganization approved and confirmed
in said proceedings. I am familiar with the prior proceed-
ings had herein and I have knowledge of the facts herein-

after set forth and make this affidavit in support of an application by said Prudence-Bonds Corporation, for an order consolidating with the other appeals hereinafter referred to, an appeal taken by Edward Endelman, Esq. and Jacob A. Freedman, Esq., appellants appearing pro se, from an order denying their application for an allowance for services.

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2. By orders made and entered in said reorganization proceedings and dated March 11, 1936, May 6, 1936, eighteen (18) orders dated January 18, 1938, and orders dated July 21, 1937, June 3, 1938 and June 6, 1938, respectively, there was referred to James G. Moore, Esq., as Special Master, the consideration of the persons or corporations to whom allowances for services or expenses should be made under the Plans of Reorganization confirmed in said proceedings and the provisions of Section 77B of the Bankruptcy Act, for written report and recommendation with his opinion thereon. Thereafter, approximately sixty-one (61) applications for allowances for services and disbursements were filed with, and hearings thereon held before, said Special Master and Prudence-Bonds Corporation (New Corporation), filed an answer and objections to substantially all of said applications for allowances.

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3. The Special Master, thereafter, filed in said reorganization proceedings, an Intermediate Report, dated November 30, 1938, wherein he recommended that allowances for services and disbursements be granted, in the aggregate sum of \$462,014.08, to a number of the applicants, recommended that other applications be denied and reserved for future determination the applications for allowances filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing in these proceedings.

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4. By a notice of motion dated December 1, 1938, returnable December 9, 1938, Prudence Securities Advisory

766 Group, an intervenor, made an application for an order passing upon said Intermediate Report of the Special Master, taking such action thereon as the Court might deem advisable and granting such other and further relief, as to the Court might seem just and proper. Upon the return day said motion was adjourned to December 16, 1938, so as to await the coming in of the Special Master's Report on the remaining applications for allowances then pending before him.

767 5. The Special Master subsequently, filed in said reorganization proceedings, an Intermediate Report dated December 12, 1938, wherein he recommended that allowances for services and disbursements in the aggregate sum of \$626,862.41, be granted to the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, and gave written notice to the parties in interest, that said Report would be handed up to the District Judge in charge of these proceedings on December 16, 1938, for consideration in conjunction with his Report dated November 30, 1938. A hearing upon said two (2) Reports was accordingly held before the District Judge on December 16, 1938, and Prudence-Bonds Corporation (New Corporation) and other parties in interest, filed objections and exceptions to the confirmation of said Reports, upon the ground, among
768 others, that the total allowances recommended by the Special Master in the aggregate sum of \$1,088,876.49, plus all prior allowances granted in these reorganization proceedings, was excessive and unreasonable and beyond the ability of the Estate to pay.

6. Thereafter, on February 1, 1939, Hon. Robert A. Inch, District Judge, filed an opinion modifying the Special Master's Report of November 30, 1938, by increasing in the aggregate sum of \$19,500.00 the allowances recommended therein and by reserving for future determination the application of the Trustees of New York Investors, Inc. for

an allowance in the sum of \$50,954.64, for reimbursement of expenses, which the Special Master recommended be denied. As thus modified, the District Judge, approved the Special Master's Report of November 30, 1938. By his opinion, the District Judge, also reserved for future determination the allowances recommended by the Special Master in his Report dated December 12, 1938, for the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and their respective attorneys appearing herein, in the aggregate sum of \$626,862.41. The District Judge also ruled, that each party to whom an allowance had been awarded or denied might submit a separate order covering the particular application involved, but that there might be included in a single order the matters not covered by separate orders submitted by February 17, 1939.

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7. Separate orders on allowances were thereafter made in said reorganization proceedings by Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of the Eastern District Court as follows:

(a) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$65,720.05, were granted to Prudence Securities Advisory Group and Percival E. Jackson & Clinton T. Roe, Esqs., its attorneys herein, for services and disbursements.

(b) Order, dated February 14, 1939, whereby, among other things, allowances in the aggregate sum of \$43,786.07, were granted to Bondholders' Reorganization Committee for the Sixth and Twelfth Series, sometimes called the "Metz Committee", and Rabenold, Scribner & Miller, Esqs., and Mark Hyman, Esq., its attorneys herein, for services and disbursements.

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(c) Order, dated February 16, 1939, whereby, among other things, additional allowances in the aggregate sum of \$162,500.00, were granted to Charles H. Kelby and Clifford S. Kelsey, as Trustees of the Debtor, and George C. Wildermuth, Esq., their attorney herein, for services.

(d) Order, dated February 16, 1939, whereby, among other things, allowances in the aggregate sum of \$38,-

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201.96, were granted to Bondholders' Protective Committee, for Prudence-Bonds, Sixteenth Series, and Rogers & Whitaker, Esqs., and Latson & Tambllyn, Esqs., its attorneys herein, for services and disbursements.

(e) Order, dated February 16, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Samuel Silbiger, Esq., attorney for George E. Eddy, for services.

(f) Order, dated February 21, 1939, as amended by order, dated February 24, 1939, whereby, among other things, an allowance in the sum of \$71,623.19, was granted to Frueauff, Burns, O'Brien & Ruch, Esqs., and Powell & Ruch, Esqs., attorneys for the Debtor herein, for services and disbursements.

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(g) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$28,056.78, were granted to Independent Prudence Bondholders Protective Committee and George M. Jaffin & Leonard Klaber, Esqs., its attorneys herein, for services and disbursements.

(h) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$20,000.00, was granted to Delafield, Marsh, Porter & Hope, Esqs., attorneys for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, on account for services.

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(i) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$14,714.02, was granted to General Committee for Prudence Securities, for services and disbursements.

(j) Order, dated February 21, 1939, whereby, among other things, allowances in the aggregate sum of \$13,696.26, were granted to Tenth Series Committee and Grosvenor Calkins, Esq., its attorney herein, for services and disbursements.

(k) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$5,000.00, was granted to Jacob A. Freedman, Esq., as associate counsel for General Committee for Prudence Securities, for services.

(l) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,500.00, was granted to Archibald Palmer, Esq., attorney for the Mayer Committee, for services. 775

(m) Order, dated February 21, 1939, whereby, among other things, an allowance in the sum of \$1,073.67, was granted to MacIntyre, McNally & Downey, Esqs., special counsel for City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Third and Seventh Series, for services and disbursements.

(n) Order, dated February 21, 1939, whereby, among other things; (1) the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified; (2) allowances in the aggregate sum of \$7,500.00, were granted to Prudence Bondholders Protective Association and Kadel, Sheils & Weiss, Esqs., its attorneys herein, for services and disbursements; (3) an allowance in the sum of \$540.12, was granted to Cummings & Lockwood, Esqs., special counsel for Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth Series, for services and disbursements; and (4) the application filed by the Trustees of New York Investors, Inc., for an allowance for disbursements, and the applications filed by the eleven (11) Corporate Trustees of the eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination. 776

(o) Order, dated February 21, 1939, which denied the application of your petitioner, Prudence-Bonds Corporation (New Corporation), for a reargument of the application for the consideration of the Reports of Special Master James G. Moore on allowances, dated November 30, 1938 and December 12, 1938. 777

8. Thereafter, after application made upon notice to all interested parties, an order was made and entered in said reorganization proceedings on March 15, 1939, granting leave to Prudence-Bonds Corporation (New Corporation), to take and prosecute appeals to this Court, from each and all of the foregoing orders. A similar application was also

778 made upon notice to the interested parties, by Reconstruction Finance Corporation, an intervenor, and a similar order dated March 15, 1939, was also made and entered in said reorganization proceedings, granting leave to said Reconstruction Finance Corporation, to take and prosecute appeals to this Court from each and all of said orders except the order described above in paragraph "7", subdivision "(o)".

779 9. Prudence-Bonds Corporation (New Corporation), thereupon duly appealed from each and all of said orders, by filing on March 15, 1939, in the office of the Clerk of the District Court, a separate notice of appeal and a bond for costs with respect to each of said orders. Appeals from each and all of said orders except the order described above in paragraph "7", subdivision "(o)", have also been duly taken by Reconstruction Finance Corporation by notices of appeal filed in the office of the Clerk of the District Court on March 15, 1939.

780 10. Thereafter, applications were made to this Court by Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation, for an order consolidating the said appeals and providing, that they be heard upon a transcript of record of the original papers, pursuant to the provisions of Section 250 of the Bankruptcy Act. Said applications which came on to be heard before this Court on March 20, 1939, were in all respects granted by order dated March 22, 1939, a copy of which is hereto annexed marked "Exhibit A" and hereby made a part hereof. For a full statement of the facts, circumstances and grounds upon which said motions were made reference is respectfully made to the original motion papers, which are on file in this Court.

11. In addition to the appeals from the orders enumerated in paragraph "7" above, taken as aforesaid, by Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation appeals to this Court,

from some or parts of some of the same orders have also been taken by eighteen (18) other parties herein. By virtue of subdivision "(k)" of Rule 75 of the Rules of Civil Procedure providing that, "when more than one appeal is taken to the same court from the same judgment, a single record shall be prepared containing all the matter designated or agreed upon by the parties, without duplication" and also by virtue of General Order 36 of the General Orders in Bankruptcy, all of said appeals are to be heard by this Court upon a single consolidated transcript of record consisting of the original papers.

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12. In addition to the orders on allowances enumerated in paragraph "7" above, orders on allowances were also made and entered in said reorganization proceedings as follows:

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(a) Order dated February 21, 1939, whereby, an allowance in the sum of \$1,500.00, was granted to Edward Endelman, Esq., for services as attorney for Protective Committee of Preferred Stockholders of The Prudence Company, Inc.

(b) Order dated February 21, 1939, denying the joint application of Cullen & Dykman, Edward Endelman and Jacob A. Freedman, Esqs., for an allowance for services as attorneys for General Committee for Prudence Securities.

13. By notice of appeal dated March 22, 1939, Edward Endelman, Esq. and Jacob A. Freedman, Esq., have appealed from the order dated February 21, 1939, described above in subdivision "(b)" of paragraph "12" whereby the joint application of Cullen & Dykman, Edward Endelman & Jacob A. Freedman, Esqs., for an allowance for services, as attorneys for General Committee for Prudence Securities, was denied. This appeal was not, however, included in the appeals consolidated by the order of this Court dated March 22, 1939, as aforesaid, for the reason that at the time the applications for such order were made no appeal had yet been taken from said order dated February

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21, 1939. Messrs. Endelman and Freedman, however, with
784 respect to said appeal only, proposed to print a separate
record on appeal, and have advised your deponent that
they will not stipulate to consolidate their appeal with the
other appeals from orders granting or denying applica-
tions for allowances. It is, therefore, respectfully sub-
mitted, that all of the reasons urged in support of the
applications heretofore made to this Court by Prudence-
Bonds Corporation and Reconstruction Finance Corpora-
tion, to consolidate the other appeals from orders on
allowances, apply with equal force to the appeal taken by
Messrs. Endelman and Freedman. Indeed, except for their
notice of appeal and the order of February 21, 1939, ap-
785 pealed from by them, all of the other papers upon which
their said appeal will be heard have necessarily been in-
cluded in the designation of the papers to be included in the
consolidated transcript of record consisting of the original
papers. Messrs. Endelman and Freedman, together with
Messrs. Cullen & Dykman, were joint counsel for General
Committee for Prudence Securities, an intervenor, and filed
a joint petition for allowance, verified May 7, 1938. By the
order dated February 21, 1939, appealed from by Messrs.
Endelman and Freedman, their joint application for an al-
lowance was denied. By a separate order dated February
21, 1939 (described above in subdivision "(k)" of para-
graph "7"), Mr. Freedman, however, upon the same joint
786 petition for an allowance, of Cullen & Dykman, Edward
Endelman and Jacob A. Freedman, verified May 7, 1938,
was granted an allowance of \$5,000.00. No appeal from this
later order has been taken by Messrs. Endelman or Freed-
man, but appeals therefrom have been taken by Prudence-
Bonds Corporation (New Corporation) and Reconstruction
Finance Corporation. The essential papers on appeal are,
therefore, the same with respect to the appeals from both
orders as aforesaid, and it seems necessary and proper that
the appeal from the order denying the joint petition of
Messrs. Endelman and Freedman for an allowance, should

be considered upon the same record on appeal and together with the consolidated appeals as aforesaid, including the appeal of Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation, from the order granting upon the same joint petition an allowance to Mr. Freedman. Moreover, it seems necessary and proper that all appeals from orders granting or denying allowances should be considered together and upon a single consolidated transcript of record, for the reason that an important issue upon the appeals is whether the aggregate total amount of all allowances granted is excessive, unreasonable and beyond the ability of the Estate to pay, under all of the facts and circumstances herein.

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WHEREFORE, on behalf of Prudence-Bonds Corporation, the New Corporation as aforesaid, your deponent respectfully prays, that an order be made herein, consolidating the appeal taken herein by Edward Endelman, Esq., and Jacob A. Freedman, Esq., by notice of appeal dated March 22, 1939, with the other appeals in this matter now pending in this Court which have heretofore been consolidated as aforesaid by order of this Court dated March 22, 1939, and providing that any necessary additional papers on appeal be included in the consolidated transcript of record consisting of the original papers.

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CHARLES M. McCARTY

(Sworn to April 6, 1939.)

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Exhibit A.

This exhibit is a copy of the order of March 22, 1939, which is printed in full herein at folios 754 to 756.

790 **Affidavit of Edward Endelman and ano. in opposition to motion to consolidate.**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

STATE OF NEW YORK	} ss.:
CITY OF NEW YORK	
COUNTY OF NEW YORK	

791 **EDWARD ENDELMAN and JACOB A. FREEDMAN, each being duly sworn, depose and say:**

FIRST: Deponents are the appellants referred to in the affidavit of Charles M. McCarty, attorney for Prudence-Bonds Corporation, in the latter's application to consolidate deponents' appeal with various other consolidated appeals now pending in this Court. This affidavit is submitted in opposition to the motion to consolidate.

792 **SECOND:** Deponents have appealed from an order dated, February 21st, 1939 made and entered in the United States District Court for the Eastern District of New York (Judge Inch) which confirms a report made by Hon. James G. Moore, Special Master, recommending that no allowance whatsoever be granted to deponents as associate counsel to the General Committee for Prudence Securities (a bondholders' committee) and which denies to deponents, as associate counsel, any allowance whatsoever. That order is not the same as the order from which the movant has appealed and concerning which there is pending the aforesaid consolidated appeals. Judge Inch granted deponents the right to enter their own order. The order entered by the movant and from which it appealed does not cover the rights of deponents as appellants herein. A separate order which

grants to appellant Freedman, *individually*, an allowance of \$5,000. has been appealed from by Prudence-Bonds Corporation.

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THIRD: Deponents were associate counsel to the General Committee for Prudence Securities which was awarded an allowance of \$11,000. After rendering services for a period of 2 years they were denied an allowance on the *sole* ground that deponent Endelman represented an alleged conflicting interest, in that prior to the intervention of the General Committee for Prudence Securities aforesaid he had represented another Committee, to wit, the Protective Committee for the Preferred Stockholders of The Prudence Company, Inc. The Prudence preferred stockholders are not stockholders of this Debtor nor are they creditors thereof. They could not, therefore, partake in any plan. Neither the Special Master nor the Court indicated a single item of service rendered by deponent Endelman that established a conflict of interest. The finding of the Special Master states that it "would appear" that there was a conflict. The said preferred stockholders intervened in this reorganization proceeding, to assist in procuring for the Debtor's bondholders full repayment of principal and accrued interest. The more procured for the bondholders the less would be the liability of The Prudence Company, Inc. on its guaranty to those bondholders. The Prudence Company, Inc. had failed to intervene in this proceeding. At all events, the said preferred stockholders remained intervenors herein only during the preliminary period *up to about the time the Debtor proposed its plan*. When the Debtor did propose its plan the Prudence preferred stockholders withdrew their intervention and the General Committee for Prudence Securities was then granted leave to intervene.

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FOURTH: Deponents, therefore, have appealed intending to submit to this Court the single question, to wit: Did appellant Endelman represent conflicting interests, as a matter of fact? If he did not, then the order appealed from

796 obviously must be reversed. Furthermore, are not appellants entitled to an allowance, assuming a conflicting representation by appellant Endelman, on the authority of *Cromwell v. Curtis*, 99 Fed. 2nd 810 (C.C.A. 2 Nov. 1938, opinion by Judge L. Hand)? Accordingly, deponents have served and filed a statement of the points to be presented.

797 **FIFTH:** Deponents proposed to print their record on appeal and to confine the record to such documents as relate to them as appellants herein, to wit: the joint application for an allowance, the answers to the said application insofar as they relate to appellants, the report of the Special Master only insofar as it relates to deponents, the opinion of the Court and the sundry usual matters such as the order appealed from, statement under Rule 13, etc. The Special Master's report covers the applications of about 18 attorneys and 11 corporate Trustees besides numerous committees.

SIXTH: The consolidated record on appeal, referred to by the movant will consist of 646 separate documents, all *typewritten*, some of which consist of 100 or more pages and at least one of them consists of 800 pages of single spaced typewritten matter. Deponents have been served with a notice to that effect. It is with that miniature library that the movant asks that appellants' appeal be consolidated.

798 **SEVENTH:** Deponents respectfully pray to be granted their right to print the simple record as it relates to their particular question and that the said record be not merged with 646 irrelevant documents having no bearing whatsoever on the issue presented. *This will obviate a tremendous waste of time by this Court in seeking in the aforesaid mass of 646 typewritten documents, the particular folios to which appellants will want to refer in their brief.* It will obviate confusion. Deponents should not be required to depend upon a typewritten record when it is their desire to present a printed record for the convenience of the Judges of this Court and all parties in interest.

WHEREFORE, deponents respectfully pray that the motion to consolidate be denied and that they be permitted to file a printed record consisting of such documents aforementioned as relate to the question presented by their appeal. 799

EDWARD ENDELMAN /
JACOB A. FREEDMAN

[Sworn to April 10, 1939.]

Order consolidating Endelman appeal.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

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At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House in the City of New York, on the 10th day of April, one thousand nine hundred and thirty-nine.

Present:

Hon. THOMAS W. SWAN,

Hon. HARRIE B. CHASE,

Hon. CHARLES C. CLARK,

Circuit Judges.

[CAPTION]

801

A motion having been made by Prudence-Bonds Corporation for an order consolidating the appeal taken by Edward Endelman and Jacob A. Freedman from the order entered in the United States District Court for the Eastern District of New York on the 21st day of February, 1939, with a consolidated appeal now pending in this Court from various orders made in the said District Court, and the matter having come on for hearing on the 10th day of April,

802 1939, pursuant to a notice of motion, dated the 6th day of April, 1939, and an affidavit sworn to on the 6th day of April, 1939 by Charles M. McCarty in support of the motion, and an affidavit sworn to on the 10th day of April, 1939, by Edward Endelman and Jacob A. Freedman having been filed in opposition;

Upon consideration thereof it is

803 ORDERED that the said motion be and the same hereby is granted with leave to said Edward Endelman and Jacob A. Freedman to print a record on appeal which shall include only such documents as relate to the question presented for determination by their appeal in accordance with the statement of points served by them as set forth in their afore-said affidavit.

WM. PARKIN
Clerk.

Motion by President and Directors of the Manhattan Company to consolidate appeals, etc.

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

804

[CAPTION]

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of J. M. Richardson Lyeth verified the 12th day of April, 1939, the undersigned will move this Court in the Courtroom thereof, at the United States Courthouse, Foley Square, in the Borough of Manhattan, City, County and State of New York, on the 17th day of April, 1939, at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can

be heard, for an order consolidating with the appeals of Prudence-Bonds Corporation (New Corporation) and the Reconstruction Finance Corporation, heretofore consolidated by order of this Court made and entered on March 22, 1939, the appeals taken herein by President & Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, and Carter, Ledyard & Milburn; City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, and Delafield, Marsh, Porter & Hope; Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, and Cullen & Dykman; Simpson, Thacher & Bartlett; Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, and Newman & Bisco, and the appeals of such other parties as should in the discretion of the Court be consolidated therewith; and providing that one transcript of record, consisting of the original papers of the District Court, shall cover all of said appeals, and further providing that all of said appeals shall be heard and argued together at the same time, and granting such other and further relief as to this Court may seem just and proper in the premises.

Dated, April 12th, 1939.

Yours, etc.

MACLAY, LYETH & WILLIAMS,
Attorneys for President & Directors of
The Manhattan Company, as Trustee
of Prudence Bonds, Fifth and Ninth
Series,

Office & P. O. Address
No. 55 Liberty Street,
Borough of Manhattan,
City of New York.

(The above Notice of Motion is addressed to attorneys for all interested parties.)

808

**Affidavit in support of President, etc. motion to consolidate
appeals, etc.**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

**J. M. RICHARDSON LYETH, being duly sworn, deposes and
says:**

809

1. I am an attorney at law duly admitted to practice in this Court and a member of the firm of Maclay, Lyeth & Williams, attorneys for President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series. I am familiar with the prior proceedings had herein, and I have knowledge of the facts hereinafter set forth, and make this affidavit in support of the application by said President and Directors of The Manhattan Company for an order consolidating with the appeals taken by Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation, heretofore consolidated by an order of this Court made and entered on March 22, 1939, the appeals taken herein by President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, and Carter, Ledyard & Milburn; City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, and Delafield; Marsh, Porter & Hope; Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, and Cullen & Dykman; Simpson, Thacher & Bartlett; Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, and Newman and Bisco, and the appeals of such other parties as should in the discretion of this Court be consolidated therewith.

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2. The appellants named above in paragraph (1) have all taken appeals from substantially the same parts of an order of the United States District Court, Eastern District of New York, made by Hon. Robert A. Inch, District Judge, and entered in the office of the Clerk of said Court on February 21, 1939, whereby, among other things, the reports of Special Master James G. Moore, on allowances, dated November 30, 1938 and December 12, 1938, were modified and confirmed as modified, and the applications filed herein by the eleven (11) Corporate Trustees of the Eighteen (18) Series of Bonds issued by the Debtor and by their respective attorneys appearing herein, for allowances for services and disbursements, were held in abeyance for future determination.

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3. By orders to show cause dated March 16, 1939, applications were made to this Court by said Prudence-Bonds Corporation (New Corporation), and said Reconstruction Finance Corporation for an order consolidating the appeals taken by said parties and providing that said appeals be heard upon one transcript of record consisting of the original papers, pursuant to the provisions of Section 250 of the Bankruptcy Act. Said applications were heard by this Court on March 20, 1939, and were in all respects granted by an order dated March 22, 1939, a copy of which is hereto annexed, marked Exhibit "A" and made a part hereof. For a full statement of the facts, circumstances and grounds upon which said motions were made reference is respectfully made to the original motion papers which are on file in this Court.

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4. By notice of motion dated April 6, 1939, an application was made by Prudence-Bonds Corporation (New Corporation) to consolidate with said appeals theretofore consolidated the appeal taken herein by Edward Endelman, Esq. and Jacob A. Freedman, Esq. Said motion was granted by order of this Court entered April 10, 1939, and a copy thereof is annexed hereto and marked Exhibit "B" and made a part hereof.

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5. Upon information and belief, no party has moved to consolidate the appeals taken by President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, and Carter, Ledyard & Milburn; City Bank Farmers Trust Company, as Trustee of Prudence Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, and Delafield, Marsh, Porter & Hope; Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series, and Cullen & Dykman; Simpson, Thacher & Bartlett; Manufacturers Trust Company, as Trustee of Prudence Bonds, Twelfth and Thirteenth Series, and Newman and Bisco. Prudence-Bonds Corporation (New Corporation), in the affidavit of Charles M. McCarty annexed to said

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notice of motion dated April 6, 1939, apparently explains as follows the reason for its failure to include these appeals in its motion to consolidate: "In addition to the appeals from the orders enumerated in paragraph '7' above, taken as aforesaid, by Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation appeals to this Court, from some or parts of some of the same orders have also been taken by eighteen (18) other parties herein. By virtue of subdivision '(k)' of Rule 75 of the Rules of Civil Procedure providing that, 'when more than one appeal is taken to the same court from the same judgment, a single record shall be prepared containing all the matter designated or agreed upon by the parties, without duplication and also by virtue of General Order 36 of the General Orders in Bankruptcy, all of said appeals are to be heard by this Court upon a single consolidated transcript of record consisting of the original papers.'"

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6. Deponent verily believes that there may be some question as to whether Rule 75, Subdivision (k) thereof, effects an automatic consolidation of all appeals from the same order, since said section does not specifically provide that all such appeals shall be heard and argued together but merely provides for one record.

7. Deponent respectfully submits that all of the said appeals should be consolidated and argued and heard at the same time upon the same record for the following reasons: All of said appeals, in so far as they are taken from the said order, involve a determination of the same question of law; that as has been hereinbefore pointed out the appeals of two of said parties have already been consolidated by order of this Court; that under Section 250 of Chapter X of the Bankruptcy Act as amended (Chandler Act), these appeals must be heard summarily on the original papers, and this Court by said order of March 22, 1939 directed that one transcript of record, consisting of the original papers, should be filed to cover the said appeals of Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation.

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WHEREFORE, on behalf of President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, your deponent prays that an order be made herein consolidating with the appeals of Prudence-Bonds Corporation (New Corporation) and the Reconstruction Finance Corporation, heretofore consolidated by order of this Court made and entered on March 22, 1939, the appeals taken herein by President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series, and Carter, Ledyard & Milburn; City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AA, Third, Fourth, Seventh and Seventeenth Series, and Delafield, Marsh, Porter & Hope; Brooklyn Trust Company, as Trustees of Prudence-Bonds, Eighth Series, and Cullen & Dykman; Simpson, Thacher & Bartlett; Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series, and Newman & Bisco, and the appeals of such other parties as should in the discretion of this Court be consolidated therewith; and providing that one transcript of record, consisting of the original papers of the District Court, shall cover all of said appeals, and

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820 granting such other and further relief as to this Court may seem just and proper in the premises.

J. M. RICHARDSON LYETH.

(Sworn to April 12, 1939).

The foregoing affidavit has annexed thereto (a) a copy of order made March 22, 1939, printed in full herein at folios 754 to 756, and (b) copy of order made April 10, 1939, printed in full herein at folios 800 to 803.

**Order consolidating appeals of President & Directors of the
Manhattan Company, et al.**

821 UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held in the United States Courthouse, in the City of New York, on the 20th day of April, one thousand nine hundred and thirty-nine.

Present:

HON. LEARNED HAND

HON. AUGUSTUS N. HAND

HON. ROBERT P. PATTERSON

822 Circuit Judges.

[CAPTION]

A motion having been made herein by counsel for the appellants to consolidate the appeals herein with that of the Prudence Bonds Corporation (New Corporation) et al;

Upon consideration thereof it is

Ordered that said motion be and hereby is granted.

WILLIAM PARKIN

Clerk

Opinion of C. C. A. 2d, July 26, 1939.

UNITED STATES CIRCUIT COURT OF APPEALS,

823

FOR THE SECOND CIRCUIT.

[CAPTION]

Before:

SWAN, AUGUSTUS N. HAND and PATTERSON,
Circuit Judges.

Consolidated appeals from the District Court of the
United States for the Eastern District of New York.

PER CURIAM:

We are of opinion that the district court should have
passed on the petitions for allowances to the corporate trustees and their attorneys at the same time that it passed on the other petitions for allowances. The objection that the corporate trustees had not yet accounted was not formidable; it could have been met by simply directing that payment of allowances to corporate trustees be withheld until conclusion of the accountings. As the situation stands, the aggregate of administration costs, always an important factor in determining the reasonableness of allowances, is wholly uncertain. On the appeal of Bank of Manhattan Company and others in the same position, the order of the district court deferring consideration of applications for allowances by the corporate trustees and their attorneys is reversed, and the matter remanded to the district court with direction to consider the applications and determine the allowances to be given. Decision of the other appeals will be held in abeyance pending disposition by the district court on the applications for allowances by the corporate trustees and their attorneys, which disposition may be brought to our attention by a supplemental record.

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The foregoing opinion is stamped "Filed July 26, 1939,
U. S. Circuit Court of Appeals, Second Circuit, D. E. Roberts, Clerk."

826 Nov. 30, 1939 motion by Prudence Securities Advisory Group, et al., to dismiss appeals.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

[CAPTION]

SIRS:

827 PLEASE TAKE NOTICE that upon the annexed affidavit of PERCIVAL E. JACKSON, duly verified November 30, 1939 and upon all papers and proceedings had herein, the undersigned will move this Court at a Term for Motions thereof to be held in the Court Room of the Circuit Court of Appeals for the Second Circuit, at the Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 4th day of December, 1939 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the appeals of Prudence-Bonds Corporation (the new corporation) and Reconstruction Finance Corporation on the ground that leave to take such appeals was not allowed by this Court, pursuant to Section 250 of the Bankruptcy Act of 1938 (commonly known as the Chandler Act) or, in the alternative, that the question of law involved herein be certified to the Supreme Court of the
828 United States.

Dated, New York, November 30, 1939.

Yours, etc.,

PERCIVAL E. JACKSON and CLINTON T. ROE
Attorneys for Appellee, Prudence Securities Advisory Group,

Office & P. O. Address,
68 William Street,
Borough of Manhattan,
City of New York.

To:

CHARLES M. McCARTY, Esq.,
 Attorney for Appellant, Prudence-Bonds
 Corporation (new corporation)
 100 East 42nd Street,
 New York City.

829

JAMES F. DEALY, Esq.,
 Attorney for Appellant, Reconstruction
 Finance Corporation,
 30 Broad Street,
 New York City.

Affidavit in support of Prudence Securities Advisory Group
 motion to dismiss.

830

UNITED STATES CIRCUIT COURT OF APPEALS,
 FOR THE SECOND CIRCUIT.

[CAPTION]

STATE OF NEW YORK
 CITY OF NEW YORK
 COUNTY OF NEW YORK

ss.:

PERCIVAL E. JACKSON, being duly sworn, deposes and
 says:

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That he appears on behalf of the appellee, Prudence
 Securities Advisory Group and with CLINTON T. ROE, is one
 of the appellees herein.

These appeals were taken by Prudence-Bonds Corpora-
 tion (the new corporation) and Reconstruction Finance Cor-
 poration from an order made by Hon. Robert A. Inch, one
 of the Judges of the United States District Court for the
 Eastern District of New York, entered the 14th day of Feb-

832 January, 1939, which allowed the Prudence Securities Advisory Group the sum of Six Thousand Five Hundred (\$6,500.) Dollars for compensation and \$19,042.69 for disbursements (including accountants' fees), and Forty Thousand (\$40,000.) Dollars to Percival E. Jackson and Clinton T. Roe, their counsel, as reorganization allowances in these proceedings.

833 These appeals were taken pursuant to Section 250 of Chapter X of the National Bankruptcy Act (commonly known as the Chandler Act); they were taken on matters of law from an order making allowances of compensation and reimbursement; they were taken independently of any other appeals in this proceeding; they were and are being heard summarily upon the original papers, and in all respects constitute the class of appeals mentioned in and provided for in Section 250 of Chapter X.

That no applications for leave to take such appeals have been made to this Court and such appeals have not been allowed by this Court.

In consequence, these appellees believe that such appeals should and must be dismissed.

834 The determination of this question involves a reconsideration of the decision of this Court in the case of *London v. O'Dougherty*, 102 F. (2d) 524, in the light of the conflicting opinion of the Circuit Court of Appeals of the Seventh Circuit in the case of *In re Albert Dickinson*, 104 F. (2d) 771, in which, on a petition for rehearing, the question was reconsidered by the Circuit Court of Appeals for the Seventh Circuit in the light of the decision of this Court in *London v. O'Dougherty*, (pp. 776-777) and the original decision of the Seventh Circuit Court adhered to.

In the event that this Court is unwilling to reconsider its decision in *London v. O'Dougherty*, or after reconsideration, adheres thereto, it is respectfully requested, in view of the fact that this Circuit Court of Appeals has rendered a decision in conflict with the decision of the Seventh Circuit Court on appeals on the same matter (Supreme Court

Rules 38, subd. 5B), that this Court certify to the Supreme Court of the United States the question of law here at issue in accordance with Rule 37 of the Rules of the United States Supreme Court. 835

WHEREFORE, these appellees pray accordingly.

PERCIVAL E. JACKSON

(Sworn to, November 30, 1939.)

The above notice of motion and affidavit contains the following decision on the reverse side:

"Motion denied Dec. 6, 1939,

T W. S

A. N. H

E. E. C

C. J. J."

836

Order denying motion of Prudence Advisory Group to dismiss appeals.

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 7th day of December one thousand nine hundred and thirty-nine. 837

Present:

HON. THOMAS W. SWAN

HON. AUGUSTUS N. HAND

HON. CHARLES E. CLARK,

Circuit Judges.

[CAPTION]

A motion having been made herein by counsel for the Prudence Securities Advisory Group to dismiss the ap-

838 peals of Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation for lack of jurisdiction, or in the alternative, that the question of law involved herein be certified to the Supreme Court of the United States,

Upon consideration thereof it is

Ordered that said motion be and hereby is denied.

D. L. ROBERTS

Clerk

839 Order to show cause on application of R. F. C. in C. C. A. to have appeals from Nov. 6, 1939 order heard on original papers, etc.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[CAPTION]

Upon the annexed affidavit of James F. Dealy, duly sworn to the 2nd day of January, 1940, and this Court being fully advised, it is

840 ORDERED, that the Debtor, the Trustees of the Debtor, and all intervenors and applicants for allowances in the above entitled proceedings, or their respective attorneys appearing herein, show cause before this Court, at the United States Court House, Foley Square, in the Borough of Manhattan, City and State of New York, Room 1705 thereof, on the 8th day of January, 1940, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made herein (a) directing that the appeals to this Court from an order of the United States District Court for the Eastern District of New York, made and entered in these proceedings on November 6, 1939, whereby allowances were fixed for various corporate trustees and their respective attorneys appearing herein, be

heard on the original papers on a date to be fixed by this Court; (b) directing that the papers constituting the Record and Supplemental Record on various other appeals from orders on allowances herein which were argued in this Court on May 22 and 23, 1939, and bearing Docket Number 16632 in this Court, be deemed to constitute a part of the record on appeal on the appeals from the aforesaid order of November 6, 1939; (c) directing the Clerk of this Court to accept from the Clerk of the United States District Court for the Eastern District of New York, such additional original papers as will, with the Record and Supplemental Record on the aforesaid appeals (Docket No. 16632) make up the record on the appeals from the said order of November 6, 1939 as settled by the District Court, by order duly made December 22, 1939; (d) directing that such additional original papers to be received from the Clerk of the District Court together with said Record and Supplemental Record on the appeals in this Court bearing Docket Number 16632, shall constitute the record on appeal on the appeals from the said order of November 6, 1939; and (e) referring said appeals to the Honorables Thomas W. Swan, Augustus N. Hand and Robert P. Patterson, and granting such other and further relief as may be just and proper in the premises; AND sufficient cause appearing therefor, it is further

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ORDERED, that service of this order and the affidavit upon which the same is based, by service of copies thereof, either personally or by mail, upon the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the above entitled proceeding, or upon their respective attorneys or solicitors appearing in said proceedings, on the 4th day of January, 1940 at or before 5 P. M., shall be deemed good and sufficient service.

843

Dated, New York, N. Y.,
January 2nd, 1940.

LEARNED HAND
U. S. Circuit Judge for the
Second Circuit.

844 Affidavit in support of R. F. C. motion to have appeals from
Nov. 6, 1939 order heard on original papers, etc.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

[CAPTION]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JAMES F. DEALY, being duly sworn, deposes and says:

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(1) I am attorney for the RECONSTRUCTION FINANCE CORPORATION, one of the appellants from the order of November 6, 1939 hereinafter described and am familiar with all the pleadings and proceedings heretofore had herein.

846

(2) This application is made in connection with certain appeals from said order of November 6, 1939 and the relief sought is an order (a) directing that the appeals from said order be heard on the original papers on a date to be fixed by this Court; (b) directing that the papers constituting the Record and Supplemental Record on various other appeals from orders on allowances herein which were argued in this Court on May 22 and 23, 1939, and bearing docket number 16632 in this Court, be deemed to constitute a part of the record on appeal on the appeals from the aforesaid order of November 6, 1939; (c) directing the Clerk of this Court to accept from the Clerk of the United States District Court for the Eastern District of New York, such additional original papers as will, with the Record and Supplemental Record on the aforesaid appeals (Docket No. 16632) make up the record on the appeals from the order of the District Court of November 6, 1939, as settled by the District Court, by order duly made December 22, 1939; (d) directing that

such additional original papers to be received from the Clerk of the District Court together with said Record and Supplemental Record on the appeals in this Court bearing Docket No. 16632, shall constitute the record on appeal on the appeals from the order of the District Court on November 6, 1939; and (e) referring said appeals to the Honorables Thomas W. Swan, Augustus N. Hand and Robert P. Patterson, Judges of this Court. 847

(3) The order of the District Court of November 6, 1939 approved the report of Special Master James G. Moore herein dated December 12, 1938 which recommended that certain allowances be awarded to various corporate trustees involved in this proceeding and their respective attorneys, and approved that part of another report of said Special Master James G. Moore dated November 30, 1938 which recommended the rejection of the application of Charles H. Kelby and Clifford S. Kelsey; as Trustees of New York Investors, Inc., for an allowance from the estate of the Debtor herein for reimbursement of expenses. Appeals from said order were taken by the following parties: 848

- (a) Reconstruction Finance Corporation;
- (b) Prudence-Bonds Corporation (New Corporation);
- (c) Brooklyn Trust Company, as Trustee of Prudence-Bonds, Eighth Series and Cullen & Dykman, Esqs.;
- (d) Charles H. Kelby, as Trustee of New York Investors, Inc.; 849
- (e) City Bank Farmers Trust Company, as Trustee of Prudence-Bonds, Series AIA, Third, Fourth, Seventh and Seventeenth Series and Delafield, Marsh, Porter & Hope, Esqs.;
- (f) The Chase National Bank of the City of New York, as Trustee of Prudence-Bonds, Fourteenth Series and Milbank, Tweed & Hope, Esqs.;
- (g) Manufacturers Trust Company, as Trustee of Prudence-Bonds, Twelfth and Thirteenth Series and Newman & Bisco, Esqs.;

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- (h) President and Directors of The Manhattan Company, as Trustee of Prudence-Bonds, Fifth and Ninth Series;
- (i) Simpson Thacher & Bartlett, Esqs., and Sonnenschein, Berkson, Lautmann, Levinson & Morse, Esqs.;
- (j) Carter, Ledyard & Milburn, Esqs.;
- (k) Larkin, Rathbone & Perry, Esqs.; and
- (l) The Marine Midland Trust Company of New York, as Trustee of Prudence-Bonds, Sixteenth Series and Sullivan & Cromwell, Esqs.

851

(4) There have been included in the record on the appeals from the order of November 6, 1939, as settled by the District Court, all the papers, records and documents constituting the Record and Supplemental Record on appeals now pending in this Court under Docket No. 16632. Those appeals which were heard by this Court on May 22 and 23, 1939, were appeals by Reconstruction Finance Corporation, Prudence-Bonds Corporation (New Corporation) and various other parties, from fifteen orders on allowances in the above proceedings, made in the United States District Court for the Eastern District of New York on February 14, 16 and 21, 1939, respectively. On or about July 26, 1939 this court (Judges Thomas W. Swan, Augustus N. Hand and Robert P. Patterson) reversed that part of one of the orders appealed from which deferred consideration of allowances to the corporate trustees and their attorneys herein.

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On such reversal this Court remanded the matter to the District Court with instructions to pass upon such allowances, directed the filing of a supplemental record showing the subsequent proceedings, and reserved decision on the remaining appeals. The District Judge thereupon proceeded in accordance with the mandate of this Court to pass upon the allowances recommended to be made to the corporate trustees and their counsel by a special master's report of December 12, 1938 and the order of November 6,

1939, now also appealed from, was entered to carry out his decision thereon, and a supplemental record showing the subsequent proceedings, was duly settled by the District Court and filed in this Court. Such Record and Supplemental Record contain, among other things, all papers upon which the order now appealed from was based. The entire Record and Supplemental Record on such appeals was properly made a part of the record on the appeals from the order of November 6, 1939, among other reasons, because one of the principal points relied on by the appellants Reconstruction Finance Corporation and Prudence-Bonds Corporation (New Corporation) in opposition to the granting of the allowances now appealed from, was and is that the total cost of this reorganization is unreasonable and excessive and all allowances must be considered by this Court in reviewing the allowances awarded by the order of November 6, 1939.

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(5) The appeals from the order of November 6, 1939 are of the character which by virtue of Section 250 of Chapter X of the Chandler Act are to be heard summarily in this Court on the original papers.

(6) The reason why an order to show cause is requested is that it will be necessary to serve 49 separate attorneys or firms, some of whom are outside the state and deponent desires that this court direct that service of a copy of the order to show cause applied for and of this affidavit, may be made either personally or by mail within a time to be fixed therein.

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(7) No previous application has been made for the relief herein requested.

(8) Deponent therefore prays for an order granting the relief outlined in paragraph "(2)" hereof. Deponent believes that the granting of this relief will inure to the benefit of all parties to this proceeding and will serve the convenience of the court. Substantially the only papers necessary

856 for the determination of the present appeals which are not included in the aforesaid Record and Supplemental Record now on file in this Court are notices of appeal by various appellants, designations of the parties and the additional papers designated by the Trustee of New York Investors, Inc. in connection with his appeal.

JAMES F. DEALY.

(Sworn to January 2, 1940.)

Order granting motion to have appeals from order of Nov. 6, 1939 heard on original papers, etc.

857

At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the United States Court House in the City of New York on the 8th day of January, 1940.

Present:

HON. LEARNED HAND,
HON. HARRIE B. CHASE,
HON. CHARLES C. CLARK,
Circuit Judges.

[CAPTION.]

858

A motion having been made herein by counsel for appellant Reconstruction Finance Corporation, for an order (a) directing that the appeals from an order on allowances herein made on November 6, 1939, by the United States District Court for the Eastern District of New York, be heard on the original papers on a date to be fixed by this Court; (b) directing that the papers constituting the Record and Supplemental Record on various other appeals from orders on allowances herein bearing Docket Number 16632 in this Court, be deemed to constitute a part of the record on ap-

peal on the appeals from the aforesaid order of November 6, 1939; (c) directing the Clerk of this Court to accept from the Clerk of the United States District Court for the Eastern District of New York, such additional original papers which, with the Record and Supplemental Record on the aforesaid appeals (Docket No. 16632) make up the record on the appeals from the said order of November 6, 1939 as settled by the District Court by order duly made December 22, 1939; (d) directing that such additional original papers to be received from the Clerk of the District Court together with said Record and Supplemental Record on the appeals in this Court bearing Docket Number 16632, shall constitute the record on appeal on the appeals from the said order of November 6, 1939; and (e) referring said appeals to the Honorables Thomas W. Swan, Augustus N. Hand and Robert P. Patterson; and no one appearing in opposition thereto;

Upon consideration thereof, it is

ORDERED that the said motion be, and the same hereby is, in all respects granted, and the aforesaid appeals be set down for argument on February 13, 1940.

D. E. ROBERTS

Clerk

Notice of motion by Prudence Advisory Group, et al., for reargument of motion to dismiss.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of PERCIVAL E. JACKSON, duly verified March 12, 1940 and upon all other papers and proceedings had herein, the under-

862 signed will move this Court at a Term for Motions thereof, to be held in the Court Room of the Circuit Court of Appeals for the Second Circuit, at the Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 18th day of March, 1940 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order granting reargument of the motion made by the appellees, Prudence Securities Advisory Group, Percival E. Jackson and Clinton T. Roe, which was denied by order of this Court, dated December 6, 1939 and upon such reargument, dismissing the appeals of Prudence Bonds Corporation (new corporation) and Reconstruction Finance Corporation, upon the ground that leave to take such appeals was not allowed by this Court pursuant to Section 250 of the Bankruptcy Act of 1938 (commonly known as the Chandler Act), and for such other and further relief as to the Court may seem just and proper.

863

Dated, New York, March 12th, 1940.

Yours, etc.,

PERCIVAL E. JACKSON and CLINTON T. ROE,
Attorneys for Appellee, Prudence
Securities Advisory Group and
pro se,

Office & P. O. Address,
68 William Street,
Borough of Manhattan,
City of New York.

864 To:

CHARLES M. McCARTY, Esq.,
Attorney for Appellant, Prudence-
Bonds Corporation (new corporation)
100 East 42nd Street,
New York City.

JAMES F. DEALY, Esq.,
Attorney for Appellant, Reconstruction
Finance Corporation,
30 Broad Street,
New York City.

**Affidavit of Percival E. Jackson in support of motion
for reargument.**

865

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK } ss.:

PERCIVAL E. JACKSON, being duly sworn, deposes and
says:

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With Clinton T. Roe, I am one of the appellees herein and represent Prudence Securities Advisory Group, also an appellee, to all of whom allowances for services rendered and disbursements incurred were duly made herein.

That the appellants attempted to appeal therefrom but failed to obtain leave of this Court and in consequence thereof said appellees moved in this Court to dismiss such appeals upon the authority of *In re Albert Dickinson Company*, 104 F. (2d) 771, and requested this Court to disregard its contrary decision in *London vs. O'Dougherty*, 102 F. (2d) 524. The allegations contained in the affidavit submitted in support of that motion are made part hereof with the same force and effect as if herein set forth at length. That such motion of these appellees was denied by this Court. That thereafter, the United States Supreme Court, having granted certiorari in the Dickinson case, on March 11, 1940 affirmed the ruling of the Seventh Circuit Court of Appeals in the Dickinson case and disapproved the ruling of this Court in *London vs. O'Dougherty* in an opinion by Mr. Justice Douglas, which opinion is annexed hereto and made part hereof with the same force and effect as if herein set forth at length.

867

868 WHEREFORE, I pray a reargument of the motion heretofore made and for an order dismissing the appeals heretofore taken by Prudence Bonds Corporation and Reconstruction Finance Corporation from the order made by Hon. Robert A. Inch, District Judge, dated February 14, 1939, awarding compensation to George A. Gaston, Ralph DeWitt Keller, Edward S. Doyle, A. C. Horn, Arthur M. Abell, George G. Hanna, constituting the Prudence Securities Advisory Group, and to Percival E. Jackson and Clinton T. Roe, counsel, and allowing to George A. Gaston, Chairman of the Prudence Securities Advisory Group, sums of money disbursed by the Prudence Securities Advisory Group and/or disbursements incurred, including allowances made for Matthews Brown & Company, accountants.

869 PERCIVAL E. JACKSON

(Sworn to March 12, 1940.)

There is annexed to the foregoing affidavit a copy of the decision of the United States Supreme Court, in Dickinson Industrial Site v. Cowan (decided March 11, 1940) 84 L. Ed. 549.

**Affidavit of Clinton T. Roe in support of motion
for reargument.**

UNITED STATES CIRCUIT COURT OF APPEALS,

870

FOR THE SECOND CIRCUIT.

[CAPTION]

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK } ss.:

CLINTON T. ROE, being duly sworn, deposes and says:
That I together with Percival E. Jackson are the appellees and we represent Prudence Securities Advisory Group, a committee of bondholders, which is also an appellee.

I make this affidavit in support of the motion by said appellees for reargument of a motion heretofore made to dismiss these appeals on the ground that the appeals were not taken in accordance with Section 250 of the Bankruptcy Act as amended and upon such reargument, that said appeals be dismissed. 871

The order appealed from was made by Honorable Robert A. Inch, one of the Judges of the United States District Court for the Eastern District of New York on February 14, 1939. Thereafter, on February 15, 1939, true copies of said order, together with notice of entry, were served on the appellants, Prudence-Bonds Corporation (New Corporation) and the Reconstruction Finance Corporation (the only appellants appealing from the orders in which these appellees are interested) and a copy of the order showing proof of service thereon was duly filed in the Clerk's office within five days after copies of the orders had been served. 872

On March 14, 1939 a motion was returnable before the District Court for leave to appeal. That this was in no wise an attempt to comply with the statute requiring leave to appeal by the appellate court in order that the appeal might be perfected, appears by the petitions submitted on these motions wherein they stated that the reason the motion was made is to obviate any difficulty that might arise by reason of certain decisions which seem to hold that only the trustees of a debtor may appeal from allowances to others unless it be shown that such trustees refused to take such appeals, and it was only for this reason that the applications were made. After the motion had been made in the District Court and on March 15, 1939, notices of appeal were filed in the District Court. No petition of appeal or assignment of errors was ever filed in either the District Court or this Court, except as stated hereinabove. 873

On March 16, 1939 an order to show cause was signed by Honorable Harrie B. Chase, one of the Judges of this Court, setting down motions made by the appellants for a consolidation of various appeals taken by them and others. These

874 papers were not filed in this Court nor any other papers filed in this Court until March 20, 1939, except a note of issue placing the motion for consolidation on the calendar, which was filed on March 17, 1939. The petition praying for consolidation of the various appeals could not be deemed a petition for leave to appeal, nor did the appellants so consider it for the following reasons:

1. The petition of the appellant, Prudence-Bonds Corporation, contained the following statement:

875

"27. That your petitioner feeling aggrieved, has duly appealed both on the law and on the facts, from each and every order described in paragraph "25" above, by filing on March 15, 1939, in the office of the Clerk of the United States District Court, Eastern District of New York, a separate notice of appeal, with proof of service thereof by mail and a bond for costs, with respect to each of said orders * * *"
(Page 12)

The petition of Reconstruction Finance Corporation praying for consolidation, contained the following statement:

876

"Reconstruction Finance Corporation appealed to this Court from all of said orders. Separate notices of appeal with respect to each of these orders were duly filed in the office of the Clerk of the United States District Court for the Eastern District Court of New York on March 15, 1939, * * *." (Page 6)

In neither of these petitions did the appellants pray that this Court exercise its discretion and allow appeals.

2. These appellees heretofore moved this Court to dismiss the appeals on the grounds now urged. The appellants filed no affidavit, but did file a joint brief which contains the following significant statements:

"No leave of this Court was necessary before taking the appeals herein." (Page 1)

"Forty-one appeals (now consolidated) from orders of allowances in this case are pending before

this Court. All these appeals were taken as of right and argued on May 22nd and 23rd, 1939." (Page 9) 877

An examination of this brief permits of no conclusion other than that these appellants appealed to this Court as a matter of right, did not obtain leave to appeal and did not consider the motion for consolidation as a petition addressed to the discretion of this Court requesting allowance of appeal.

3. Another cogent reason exists for the asseption that the petition for consolidation was never intended to be the equivalent of a petition for appeal. The Court will remember that the appeals in this matter were heard in two sections. The first appeal involved allowances to the trustees of the debtor, their counsel, committees and others. The latter group of appeals involved allowances made to the corporate trustees. The order granting allowances to the corporate trustees was made on November 6, 1939 and the motion for the consolidation of those appeals was not made until forty days had elapsed from the entry of the order. 878

It is respectfully submitted that if the appellants intended, by petition for consolidation, to move this Court to exercise its discretion in determining whether leave to appeal should be granted, the appellants would have filed a petition for the consolidation of this later group of appeals within the time permitted by the statute for taking an appeal. This they did not do. Are we to assume, therefore, in the light of their present argument, that they intended to appeal only from the first batch of appeals and not from the second? 879

One matter arises that requires further clarification. The order consolidating the first group of appeals provides that the motion be granted "without prejudice to a motion to dismiss said appeals." I have been advised and verily believe that this was inserted at the instance of my associate, Mr. Jackson (Mr. Jackson is presently in California and for that reason this affidavit is made by myself) who

880 stated to the Court that he wished to move to dismiss the appeals on the grounds that leave to appeal had not been obtained and that the appellants were not parties aggrieved. The fact is that a draft of motion papers to dismiss for failure to obtain leave of this Court were prepared and it was only upon reading the opinion of London vs. O'Dougherty in the Advance Sheets that we withheld making the motion. In any event the clause referred to is clear and means what it says and even if it were not present the questions raised on this motion could be presented to this Court for jurisdiction may never be waived or consented to (Old Nick Williams Co. vs. U. S. 215 U. S. 541, 54 L. Ed. 318).

881 WHEREFORE, I pray that this Court grant reargument of the motion heretofore made by Prudence Securities Advisory Group and Clinton T. Roe and Percival E. Jackson to dismiss the appeals of Prudence Bonds Corporation (new corporation) and Reconstruction Finance Corporation and upon such reargument, that the appeals be dismissed for lack of jurisdiction.

CLINTON T. ROE

(Sworn to March 22, 1940.)

Notice of motion of Independent Committee to dismiss
appeals.

882 UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of LEONARD KLABER, duly verified the 13th day of March, 1934, and upon all the papers and proceedings had herein, the undersigned will move this Court at a Term for Motions

thereof, to be held in the Courtroom of the Circuit Court of Appeals for the Second Circuit, at the Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 18th day of March, 1940, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order dismissing the appeals of Prudence-Bonds Corporation (the new corporation) and Reconstruction Finance Corporation from a certain order dated February 21, 1939, made by the United States District Court for the Eastern District of New York, awarding compensation and disbursements to these appellees, on the ground that leave to take such appeals was not allowed by this Court, pursuant to Section 250 of the Bankruptcy Act of 1938 (commonly known as the Chandler Act).

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884

Dated, New York, March 13th, 1940.

Yours etc.,

GEORGE M. JAFFIN and LEONARD KLABER,
Pro Se and as Attorneys for the
Independent Prudence Bondholders Protective Committee,

Office & P. O. Address,

285 Madison Avenue
Borough of Manhattan,
City of New York.

To:

CHARLES M. McCARTY,
Attorney for Prudence-Bonds Corporation
(New Corporation) Appellant,
100 East 42nd Street,
Borough of Manhattan,
City of New York.

885

JAMES F. DEALY,
Attorney for Reconstruction Finance
Corporation, Appellant,
30 Broad Street,
Borough of Manhattan,
City of New York.

**886 Affidavit in support of motion by Independent Committee
to dismiss appeals.**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LEONARD KLABER, being duly sworn, deposes and says:

887

That GEORGE M. JAFFIN and myself, jointly, are appellees herein. We represent the INDEPENDENT PRUDENCE BOND-HOLDERS PROTECTIVE COMMITTEE, which is also an appellee herein.

888

The appeals involving said appellees were taken by the PRUDENCE-BONDS CORPORATION (the new corporation) and RECONSTRUCTION FINANCE CORPORATION from an order made by Hon. Robert A. Inch, one of the Judges of the United States District Court for the Eastern District of New York, entered on the 21st day of February, 1939, which allowed members of the INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE the sum of Fifteen Hundred (\$1500.) Dollars, and allowed GEORGE M. JAFFIN and LEONARD KLABER, their counsel, the sum of Twenty-five Thousand (\$25,000.) Dollars as compensation for their services in the reorganization, and the further sum of Fifteen Hundred Fifty-six Dollars and Seventy-eight Cents (\$1556.78) for their disbursements incurred therein.

The appeals by the PRUDENCE-BONDS CORPORATION (the new corporation) and the RECONSTRUCTION FINANCE CORPORATION from the allowances granted to the INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE and their attorneys, GEORGE M. JAFFIN and LEONARD KLABER, as afore-

said, were taken pursuant to Section 250 of Chapter X of the National Bankruptcy Act (commonly known as the Chandler Act); they were taken on matters of law from an order making allowances of compensation and reimbursement; they were taken independently of any other appeals in this proceeding; they were and are being heard summarily upon the original papers, and in all respects constitute the class of appeals mentioned in and provided for in Section 250 of Chapter X. 889

No applications for leave to take such appeals have been made to this Court, and the time to perfect any such appeals has expired.

WHEREFORE, these appellees pray that in accordance with the authority of *The Dickinson Industrial Site, Inc. v. Percy Cowan, et al.*, decided by the United States Supreme Court on March 11th, 1940, a copy of which deponent respectfully begs leave to submit upon the argument of this motion, such appeals should and must be dismissed. 890

LEONARD KLABER.

(Sworn to March 13, 1940.)

Supplemental affidavit in support of motion by Independent Committee to dismiss appeals.

[CAPTION]

891

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LEONARD KLABER, being duly sworn, deposes and says that GEORGE M. JAFFIN and your deponent are the attorneys for the INDEPENDENT PRUDENCE BONDHOLDERS PROTECTIVE COMMITTEE, and for themselves as counsel for said Committee, both appellees in this proceeding. This affidavit is

892 being submitted in support of the motion of said appellees to dismiss the pending appeals, and by way of reply to the opposing affidavits heretofore submitted by JAMES F. DEALY and CHARLES M. McCARTY.

In accordance with the decision in the case of DICKINSON INDUSTRIAL SITE, INC. vs. COWAN, et al., referred to in the original moving papers, application for motion to dismiss should be granted in the instant case because the appellants did not make any application addressed to this Court for leave to appeal as required by law. As stated by Mr. Dealy, on the second page of his affidavit:

"In no case was leave to take the appeals formally requested of this Court."

893 Furthermore, at the end of the second full paragraph on page 3 of his affidavit, the following statement is made:

"Mr. McCarty and I concluded that it was unnecessary to make an application to this Court for leave to take the present appeals, so advised our clients and took the appeals by notices of appeal."

The appellants now argue that the order of consolidation should now be considered by this Court to be the equivalent of an application for leave to appeal in accordance with the requirement of the statute. This contention is unsound for the following reasons:

894 1st: In applying for an order of consolidation, the PRUDENCE-BONDS CORPORATION petition verified March 16th, 1939, at paragraph 27 thereof, stated:

"27. That your petitioner feeling aggrieved, has duly appealed both on the law and on the facts, from each and every order described in paragraph '25' above, by filing on March 15, 1939, in the office of the Clerk of the United States District Court, Eastern District of New York, a separate notice of appeal, with proof of service thereof by mail and a bond for costs, with respect to each of said orders * * *"

Similar language is contained in the application of the RECONSTRUCTION FINANCE CORPORATION, likewise submitted 895 in support of the motion for consolidation.

In view of these recitals, it cannot now be argued that the order of consolidation was the equivalent of granting leave to appeal, especially since the appellants themselves, at the very time of the consolidation application, already considered themselves properly before this Court.

2nd: These appellees did not oppose the application for an order of consolidation. If, however, they had thought that the order of consolidation might even remotely be construed as an application for leave to appeal, they most assuredly would have addressed themselves to this Court more than a year ago, in support of their contention that there had not been an abuse of discretion. All the parties to this proceeding had a right to assume that the application for consolidation was nothing more than a motion of mere administrative convenience. 896

3rd: Finally, the order of consolidation itself, entered March 22nd, 1939, provides:

“Ordered that said motions be and hereby are granted, without prejudice to a motion to dismiss said appeals.”

There are now two groups of appeals claimed to be pending before this Court. The original group involved fees and disbursements awarded by Judge Inch, aggregating approximately \$478,000.00. The first order of consolidation was entered with respect to this group only. The second involved fees and allowances awarded to the Corporate Trustees, their counsel and others, aggregating over \$600,000.00. As to the first group of appeals, it is urged by the appellants that the original order of consolidation was filed within the statutory period. However, as to the second, it is admitted that the order of consolidation was not filed within such period. 897

898 If the strained and unsound interpretation of the order of consolidation now advanced by the appellants, were adopted by this Court, the very result originally sought by the appellants, namely, a consideration of the entire costs of the reorganization, would be frustrated.

In view of these facts, it is apparent that the appellants have not complied with the provisions of Section 250 of the National Bankruptcy Act, as determined by the so-called Chandler Act, and for that reason, in accordance with the decision of the DICKINSON case, it is respectfully submitted that the pending appeals be dismissed.

LEONARD KLABER.

899 (Sworn to March 22, 1940.)

Affidavit of James F. Dealy in opposition to motions to dismiss appeals.

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

900 STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JAMES F. DEALY, being duly sworn, deposes and says:

I am attorney for appellant Reconstruction Finance Corporation (hereinafter called "RFC"), and make this affidavit in opposition (a) to the motion by Prudence Securities Advisory Group and their attorneys to reargue their motion to dismiss and (b) to the motion to dismiss made by Independent Prudence Bondholders Protective Committee and their attorneys.

The motion by the Prudence Securities Advisory Group relates to appeals from an order made February 14, 1939, copy of which was served on appellants on February 15, 1939. 901

The motion by Independent Prudence Bondholders Protective Committee relates to appeals from an order made February 21, 1939, entered on motion of the moving parties. No copy of this order was served on appellants.

The motions are directed only to the appeals taken from the orders granting allowances to the moving parties. The District Judge had held the Chandler Act applicable. However, a total of fifty-four separate appeals, in two separate groups, were taken herein from seventeen similar orders (Vol. 1, papers 47-61; Supplemental Record, paper 5). The first group of appeals, including those awarding allowances to the moving parties, were consolidated, ordered to be heard on the original papers and were argued and finally submitted on May 22 and 23, 1939. The second group of appeals, all being from one order, made pursuant to the direction of this Court in *In re Prudence Bonds Corp.*, 106 F. (2d) 44, were heard together and finally submitted on February 17, 1940. Except as passed upon by this Court in *In re Prudence Bonds Corporation*, *supra*, all of the foregoing appeals are still pending and undetermined. 902

Each of the fifty-four appeals was taken by filing a separate notice of appeal in the district court and by taking other appropriate steps under the Federal Rules of Civil Procedure. All of said appeals were taken in matters of fact as well as of law (Vol. 1, papers 2-42, inclusive; Vol A, papers 2, 5, 8-17, inclusive). In no case was leave to take the appeals formally requested of this Court. 903

The appeals taken in the first group by RFC and the Prudence-Bonds Corporation (herein referred to as "New Corporation") were taken by separate notices of appeal filed March 15, 1939, rather than by application for leave, in reliance on the decision of this Court in *London v. O'Dougherty*, 102 F. (2d), 524. The application for leave to

904 appeal in the *London* case was heard by this Court and denied from the Bench on March 6, 1939. Thereafter, and on March 13, 1939, this Court filed a *per curiam* opinion in that case, along with two other opinions relating to practice on appeals under the Chandler Act. (*Siegel v. Margiotta*, 102 Fed. (2d) 525, *Robertson v. Berger*, 102 Fed. (2d), 530.)

Mr. London, who made the application for leave which was denied in the *London* case, is one of the appellants in this case (Vol. 1, paper 35), and I learned of the decision in the *London* case within a few days after the motion was argued and decided.

905 The question of the proper procedure in taking the present appeals, in view of the then recent amendments to the Bankruptcy Act, the enactment of the Federal Rules of Civil Procedure and the amended General Orders in Bankruptcy, was very carefully considered by Mr. McCarty, attorney for the New Corporation, and by me before the appeals were taken. I also conferred with the Clerk of this Court and of the District Court in connection therewith. Prior to the time these appeals were taken I was advised by the Clerk of the District Court that he believed he could not accept any of the papers except the bond on appeal, ordinarily filed in the District Court under the practice on appeals from orders of this character under Section 77-B, on the ground that the proper way to take the appeal was by a notice of appeal. In view of the *London* decision and the practice in this Court established by it, Mr. McCarty and I 906 concluded that it was unnecessary to make an application to this Court for leave to take the present appeals, so advised our clients and took the appeals by notices of appeal.

I am advised that since the decision of the *London* case on March 6, 1939, the Clerk of this Court has kept available in his office a copy of the *London* decision and exhibited same to attorneys inquiring as to the procedure in connection with appeals from orders on allowances under the Bankruptcy Act. I know that since the *London* decision it has been followed and that it established the settled practice

in this Circuit for the taking of appeals on allowances under the Bankruptcy Act. I am also advised that the few formal applications which were made for leave to appeal in such cases after the *London* decision was filed were summarily denied by this Court on the ground that the same were unnecessary. I know that since the *London* decision appeals from orders on allowances in bankruptcy proceedings taken solely by notice of appeal have been heard and decided and that the practice established by the *London* decision has become well settled in this Circuit. 907

The extreme care which was exercised by appellants in connection with these appeals is further indicated by the motions made on notice to all interested parties, and granted in the District Court for leave to take these appeals. Those motions were made so that there might be no ground for possible technical objection to appeals by RFC and the New Corporation under the doctrine of *Chatfield v. O'Dwyer*, 101 Fed. 797, *Christian v. R. Hoe & Co. Inc.*, 79 Fed. (2nd) 541, and similar cases. Such cases held, and I believed it was and still is, the law, that only the trustee in bankruptcy was the proper party to prosecute appeals from orders on allowances unless for good cause shown to the District Court it authorized the taking of such appeals by other interested parties. 908

On the hearing of said motions before the District Court it was shown that the trustees of the debtor had conveyed to the New Corporation their interests in the collateral underlying the debtor's eighteen series of bonds and had taken the position they had been superseded by the New Corporation, had therefore not objected to any applications for allowances herein and were doubtful that they were proper parties to appeal (Vol. 1, paper 43). The RFC, the New Corporation and the trustees of the Prudence Company, Inc. had been the only parties who objected to allowances in the District Court. In these circumstances, the District Court, as above indicated, granted the applications, although Judge Inch stated he did not believe they were necessary. 909

910 In this very case, Mr. McCarty, as attorney for the New Corporation, had on February 6, 1939, applied for leave to appeal from an order which was subsequently reversed by this Court on said appeal (*Central Han. Bk. v. President and Directors of Manhattan Company et al.*, 105 Fed. (2) 130). That order involved a question of the jurisdiction of the District Court. At the time such appeal was taken the Amended General Orders in Bankruptcy had not yet become effective and there was a doubt (later resolved in *Robertson v. Berger*, 102 Fed. (2d) 530, in a decision filed simultaneously with the *London* decision) whether the order was appealable as a matter of right since no sum of money was specified in the order and since this Court had not yet passed on the question. As the RFC was vitally interested in the success of said appeal and as the practice in this Circuit had not as yet been established by any decision, as counsel for RFC in this proceeding, I concurred in the decision of the New Corporation to apply for leave and personally attended the hearing of the application. Therefore, if Mr. McCarty, attorney for the New Corporation, or I at the time we took the present appeals for our clients, had any doubt of appellants' right to rely on the *London* decision in taking appeal by notice of appeal, we certainly would have applied to this Court for leave.

911 Appellants RFC and the New Corporation did, however, prior to the expiration of the time to appeal, formally move this Court for relief in connection with these appeals. On 912 March 16, 1939, orders to show cause herein were obtained by appellants. These orders, which are made a part hereof, were signed by Judge Harrie B. Chase and required the debtor, the trustees of the debtor and all intervenors and applicants for allowances or their respective attorneys herein to show cause before this Court on March 20, 1939, why an order should not be made herein consolidating all the appeals which had been taken, directing the acceptance by the Clerk of this Court for filing one transcript of record covering all of said appeals consisting of the original papers

upon which they were based, and for such other and further relief as might be proper. In accordance with said orders they were duly served on the moving parties as well as on all other appellees on said 16th day of March, 1939. 913

Proof of the due service thereof was, thereafter, duly filed herein and is hereby made a part hereof. The aforesaid orders to show cause were based respectively on an affidavit by Jerome Thralls, Esq., Special Representative of RFC in charge of this matter, and on a petition of the New Corporation, both of which were duly verified March 16, 1939.

The aforesaid affidavit and petition (both of which are also respectfully made a part hereof) contained, among other pertinent facts, complete statements of the proceedings in the lower court respecting allowances, the excessive costs of the reorganization and reasons appellants believed the District Court had committed reversible errors. Both of said papers specifically called attention of the Court to Sec. 250 of the Bankruptcy Act. 914

Said applications were heard on March 20, 1939, the first motion day after the signing of the order to show cause, and were thereupon duly granted by order made herein on March 22, 1939, which order is hereby respectfully referred to and made a part hereof.

Mr. Percival E. Jackson appeared at the hearing of those applications and stated to this Court that he might wish to raise the question that neither RFC nor the New Corporation were proper parties to appeal and that although he did not oppose said applications he did not wish to be precluded from moving to dismiss the appeals on such ground. The Court said the order would provide that it was without prejudice to such a motion to dismiss. None of the appellees objected on the return of said applications that they should be denied or the appeals dismissed for the reason that appellants had not made out a prima facie case of the merits of their appeal or had specifically requested this Court for leave to appeal. 915

916 In December, 1939, almost seven months after the appeals from the orders granting allowances to the moving parties were argued and finally submitted to this Court, the Prudence Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, its attorneys, made a motion to dismiss the appeals on the basis of the decision in the *Dickinson* case which had been rendered by the Circuit Court of Appeals in the Seventh Circuit on May 22, 1939. Such motion was denied by this Court by order duly made December 6, 1939.

917 Great hardship would result if these appeals were now to be dismissed by reason of the decision of the Supreme Court in *Dickinson Industrial Site, Inc. v. Cowan*, U. S., , decided March 11, 1940. Appellant RFC has incurred substantial expense in perfecting these appeals. In addition, I am advised that there are over 35,000 holders of bonds reorganized in this proceeding. The rights and investments of all these bondholders would be severely impaired by the granting of a dismissal of these appeals since the entire cost of the reorganization is taken out of the trust funds belonging to these bondholders.

918 The appeals of RFC and the New Corporation raise important issues. In their briefs and oral argument said appellants contend that substantially all allowances awarded by the District Court were grossly excessive; that the total cost of this reorganization exceeded the staggering sum of \$1,500,000, or about 2¾% of the principal amount of outstanding bonds and approximately 10% of the recognized market value of such bonds at the time the applications for allowances were filed Vol. 18, paper 632, p. 17). Said appellants further showed that costs of several comparable reorganizations ranged from .42% to 1.96% of the bonds therein reorganized (Vol. 18, paper 628, p. 3). Appellants further showed that no principal payments had been made to bondholders before the reorganization was completed on bonds in seven of the eighteen series of the principal amount of \$23,534,500, while in seven other series the principal pay-

ments varied from \$20 to \$100 per \$1,000 bond, and in only four series had the total principal payments exceeded 10%; that interest remained unpaid on one series from November 1, 1932, on four other series from 1933, on four additional series from 1934, and on six series from 1935 (Vol. 18, paper 628, p. 2); and that the total unpaid interest on the bonds reorganized at the date of the consummation of the plans amounted to over \$10,200,000 (Vol. 18, paper 632, p. 302). Appellant Prudence-Bonds Corporation also contended as a matter of law that the District Court erred in awarding any allowances whatever to four minority bondholders committees and their attorneys, including the moving parties, on the ground that the proxies which said committees solicited bondholders to sign provided in substance that the signing thereof was without expense or financial obligation to bondholders or would not obligate them to pay any fees or expenses of said committees (Point I of brief of appellant New Corporation). Nevertheless, the allowances to be paid out of the trust funds belonging to these bondholders awarded by the District Court to said four committees and their attorneys aggregate \$146,450 for services and \$29,314.86 for disbursements (Vol. 1, papers 47, 48, 50, 53). 919

In addition to the foregoing, numerous steps and proceedings have been taken in and a vast amount of time devoted to these appeals by appellants, their counsel, the District Court and this Court. In order that the Court may be aware of the magnitude of the effort which would be nullified by the granting of these motions I shall enumerate some of the proceedings which have been had and some of the things which have been done here in reliance upon this Court's decision in *London v. O'Dougherty*, supra. 920

The first group of appeals herein were argued and finally submitted on May 22 and 23, 1939. On July 26, 1939, this Court, by its *Per Curiam* decision herein (*In re Prudence-Bonds Corporation*, 106 F. (2d) 44), directed the District Court to pass on the petition for allowances to the Corporate 921

922 Trustees and their attorneys, for the reasons that "the aggregate of administration costs, always an important factor in determining the reasonableness of allowances, is wholly uncertain". In its opinion this Court also stated (p. 45):

"Decision of the other appeals will be held in abeyance pending disposition by the district court on the application for allowances by the corporate trustees and their attorneys, which disposition may be brought to our attention by a supplemental record."

923 By order of this Court dated August 7, 1939, the Clerk was directed to return the original papers, constituting the consolidated record on the aforesaid appeals, to the District Court for its temporary use in completing the above decision. Thereafter, the mandate on the decision of this Court was filed in the District Court on August 15, 1939, and order entered thereon September 18, 1939 (Supplemental Record, papers, 1, 3).

924 Subsequently Judge Inch (Supplemental Record, papers 4-5) granted allowances of \$626,097.20 to the Corporate Trustees and their attorneys as recommended by the Special Master and approved the recommendation of the Special Master denying the application of the Trustees of New York Investors, Inc. for reimbursement of expenses. The District Judge stated that he was taking such action to comply with the decision of this Court.

Promptly, thereafter, RFC and the New Corporation moved to settle the Supplemental Record showing the action of the District Judge, as required by this Court's decision. Such Supplemental Record was accordingly settled by order of the District Court (Supplemental Record, papers 6-7) and, thereafter duly filed in this Court.

RFC and the New Corporation each appealed from the allowances to the Corporate Trustees and their counsel by notice of appeal duly filed November 30, 1939, following the practice adopted on the former appeals (Vol. A, papers 2,

3). Likewise, they had separately moved for and obtained from the District Court leave to take these appeals (Vol. A, papers 3, 4, 6, 7). 925

Ten other appeals from said order of November 6, 1939, were also taken to this Court (Vol. A, papers 8 to 17, inclusive).

None of the aforesaid appellants applied to or specifically obtained leave to appeal from this Court.

Thereafter, upon notice to all interested parties, appellants applied to the District Court for an order settling the record on the appeals from the above order granting allowances to the Corporate Trustees and their counsel; fixing the time for filing said record in accordance with Rule 73(g) of the Federal Rules of Civil Procedure; providing for the certification of said record on appeal; and directing that the original record and supplemental record on appeal, on the appeals from the orders of February 14, 16 and 21, 1939, then pending and undetermined in this Court, be deemed a part of the record on the appeals from the order of November 6, 1939 (Vol. C, paper 68). Said motion was heard by the District Court on December 15, 1939, and granted by order dated December 22, 1939 (Vol. C, paper 69). 926

Thereafter, upon notice to the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances, appellants duly moved in this Court for an order (a) directing that the appeals to this Court from the order of November 6, 1939, be heard on the original papers on a date to be fixed by this Court; (b) directing that the papers constituting the record and supplemental record on the appeals from orders on allowances which were argued in this Court on May 22 and 23, 1939, be deemed to constitute a part of the record on the appeals from the order of November 6, 1939; (c) directing the Clerk of this Court to accept from the Clerk of the District Court such additional original papers as would make up the record on the appeals from the order of November 6, 1939, as settled by the District 927

928 Court; (d) directing that such additional original papers to be received from the Clerk of the District Court, together with said record and supplemental record, shall constitute the record on appeal on the appeals from said order of November 6, 1939; and (e) referring said appeals to the Honorable Thomas W. Swan, Augustus N. Hand and Robert P. Patterson, the Judges of this Court who heard the appeals from orders on allowances argued on May 22 and 23, 1939, as aforesaid, and for other and further relief as might be just and proper in the premises. Said motion was heard by this Court on January 8, 1940, and was in all respects granted by order dated the same day, which order provided that the appeals from the order of November 6, 1939, be set down for argument on February 13, 1940. Said motion papers and order are made a part hereof.

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The record on appeal was duly filed in this Court on January 25, 1940, in accordance with orders therefor duly obtained from the District Court. Appellants' and appellees' briefs were duly filed in this Court and the appeals from the said order of November 6, 1939, were duly argued before this Court on February 17, 1940. Said appeal as well as all prior appeals from the above mentioned orders on allowances are pending in this Court undetermined, except in so far as the appeals from part of one of said orders was disposed of by the decision of this Court in *In re Prudence-Bonds Corporation*, 106 F. (2d) 44.

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WHEREFORE, your deponent, on behalf of appellants Reconstruction Finance Corporation and Prudence-Bonds Corporation (New Corporation), respectfully requests that the aforesaid motions be denied and if further application for leave to appeal should be deemed necessary, that it be considered made by said appellants and granted, with respect to all pending appeals, on the basis of the filed papers.

JAMES F. DEALY

(Sworn to March 18, 1940.)

**Affidavit of Charles M. McCarty in opposition to motions
to dismiss appeals. 931**

**UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.**

[CAPTION]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

CHARLES M. MCCARTY, being duly sworn, deposes and
says: 932

I am attorney for appellant Prudence-Bonds Corporation, the New Corporation formed pursuant to the Plans of Reorganization confirmed in the above entitled proceedings, and I make this affidavit in opposition to the motion of appellees Prudence Securities Advisory Group and its attorneys, to reargue their motion to dismiss appeals of appellants Reconstruction Finance Corporation and Prudence-Bonds Corporation, and the motion of appellees Independent Prudence Bondholders Protective Committee and its attorneys, to dismiss appeals of said appellants. As attorney for appellant New Corporation, I have collaborated with James F. Dealy, Esq., attorney for appellant Reconstruction Finance Corporation, in respect of all steps and proceedings taken by said appellants in connection with their appeals pending herein. 933

I have read the annexed affidavit of said James F. Dealy, duly verified the 18th day of March, 1940, and I know the contents thereof and the statements contained therein are true and correct.

WHEREFORE, your deponent, on behalf of appellants Reconstruction Finance Corporation and Prudence-Bonds Corporation (New Corporation), respectfully requests that the

934 aforesaid motions be denied and if further application for leave to appeal should be deemed necessary, that it be considered made by said appellants and granted, with respect to all pending appeals, on the basis of the filed papers.

CHARLES M. McCARTY

(Sworn to March 18, 1940.)

Supplemental Affidavit of Charles M. McCarty in opposition to motions to dismiss appeals.

UNITED STATES CIRCUIT COURT OF APPEALS,

935

FOR THE SECOND CIRCUIT.

[CAPTION]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

CHARLES M. McCARTY, being duly sworn, deposes and says:

936 I am attorney for appellant Prudence-Bonds Corporation (New Corporation) and make this affidavit supplemental to my affidavit and the affidavit of James F. Dealy, in opposition to the motions to dismiss appeals in the above matter.

On the argument of these motions, on March 18, 1939, Percival E. Jackson, attorney for moving parties, contended, with respect to the appeals of appellants RFC and the New Corporation, from the order of the District Court made February 14, 1939, granting allowances to Prudence Securities Advisory Group and its attorneys, that no paper was filed in this Court on or before March 17, 1939, the time to appeal from said order. In the affidavit of James F.

Dealy, in opposition to these motions, it is pointed out and established by the records of this Court, that on March 16, 1939, appellants RFC and the New Corporation obtained orders to show cause, signed by Judge Harrie B. Chase, on their respective applications to consolidate these appeals and have them heard upon the original papers and for other relief, as more specifically set forth in said orders to show cause. Those orders to show cause were signed upon the affidavit of Jerome Thralls, Special Representative of RFC, verified March 16, 1939, and the petition of the New Corporation, verified the same day. Mr. Thrall's affidavit concluded with the following prayer for relief:

"Wherefore, deponent respectfully prays that an order in the form submitted herewith be made herein requiring the Debtor, the Trustees of the Debtor and all intervenors and applicants for allowances in the above-entitled proceeding or their respective attorneys appearing herein, to show cause at a time and place to be fixed in said order, why an order should not be made herein consolidating for all purposes the aforesaid appeals of Reconstruction Finance Corporation from the orders hereinabove referred to as well as the appeals hereinabove referred to, taken by the new Prudence-Bonds Corporation, directing that one transcript of record covering all of said appeals be filed and directing the Clerk of this Court to accept such transcript of record, consisting of the original papers upon which said appeals are to be heard, when duly certified by the Clerk of the United States District Court for the Eastern District of New York, and why such other and further relief as may be just and proper in the premises should not be granted to said Reconstruction Finance Corporation."

The petition of the New Corporation concluded with the following prayer for relief:

"WHEREFORE, your petitioner respectfully prays, that an order be made herein consolidating, for all purposes, the appeals of your petitioner from the orders described in paragraph '25' above as well as

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the appeals hereinabove referred to taken by Reconstruction Finance Corporation, directing that one transcript of record covering all of said appeals be filed and directing the Clerk of this Court to accept such transcript of record, consisting of the original papers upon which said appeals are to be heard, when duly certified by the Clerk of the United States District Court for the Eastern District of New York, and granting such other and further relief as may be just and proper in the premises, and that an order to show cause in the form hereto annexed be granted."

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Copies of said orders to show cause, affidavit and petition were served on March 16, 1939, as provided by the orders to show cause. On March 17, 1939, appellant RFC and appellant New Corporation each filed in the office of the Clerk of this Court a Note of Issue with respect to each of said motions. Said Notes of Issue which are on file herein are hereby made a part hereof. I personally delivered to the Clerk of this Court on March 17, 1939, the said order to show cause and petition of the New Corporation with proof of due service thereof, and said Note of Issue, and was advised by him that under the rules of this Court, a Note of Issue is the only paper which can be filed in the office of the Clerk, prior to the return day of a motion and that the motion papers with proof of service are required to be filed in open Court the day of the argument of the particular motion.

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On March 20, 1939, the above mentioned motions of appellants RFC and the New Corporation to consolidate appeals, to have them heard on the original papers and for other relief, were heard by this Court and granted, the motion papers filed on that day, and an order granting said motions was signed on March 22, 1939. On April 4, 1939, certified copy of said order was filed in the office of the Clerk of the District Court.

I was present upon the argument of the above mentioned motions of appellants RFC and the New Corporation, which were heard on March 20, 1939, and no one contended or

suggested to this Court, that said motions should be denied for the reason leave to appeal had not been applied for or duly obtained by said appellants. It was, however, stated by Mr. Jackson that appellants were not proper parties to appeal and that he wanted to reserve his rights to move to dismiss upon such ground. He has never done so, although the point was discussed in a brief filed jointly by him and the attorneys for three other Committees. Louis G. Bernstein, Esq., one of the attorneys for appellees Metz Committee and Rabenold, Scribner & Miller, Esqs., its attorneys, appeared on said motions and called the attention of this Court to the fact that Section 250 of the Bankruptcy Act required that the appeals be summarily heard and requested such a summary hearing. This Court then, and upon Mr. Bernstein's statement, tentatively set the appeals down for argument on April 17, 1939. 943

Thereafter, by notice of motion dated April 6, 1939, returnable April 10, 1939, a motion was made by the New Corporation upon my affidavit verified April 6, 1939, to consolidate an appeal subsequently taken by Edward Endelman and Jacob A. Freedman, by notice of appeal dated March 22, 1939, with the appeals consolidated by the order of this Court dated March 22, 1939. Said motion was heard before this Court on April 10, 1939 and granted by order signed the same day, with leave to appellants Endelman and Freedman to print a record on appeal to include only such documents as relate to the question presented for determination by their appeal. Said order and the papers upon which it was granted which are on file herein are hereby made a part hereof. 944

By notice of motion dated April 12, 1939, upon the affidavit of J. M. Richardson Lyeth, verified the same day, a motion was also made to this Court, on notice to all intervenors and applicants for allowances, by the attorneys for President & Directors of the Manhattan Company, for an order consolidating the aforesaid appeals of RFC and the New Corporation consolidated by the aforesaid order of 945

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this Court dated March 22, 1939, with appeals taken by President & Directors of the Manhattan Company and Carter, Ledyard & Milburn, its attorneys; City Bank Farmers Trust Company and Delafield, Marsh, Porter & Hope, its attorneys; Brooklyn Trust Company and Cullen & Dykman, its attorneys; Simpson Thacher & Bartlett; Manufacturers Trust Company and Newman & Bisco, its attorneys; and the appeals of such other parties as should in the discretion of this Court be consolidated therewith; and providing that one transcript of record, consisting of the original papers of the District Court, should cover all of said appeals, and further providing, that all of said appeals should be heard together at the same time, and granting such other and further relief as to this Court might seem just and proper in the premises. Said motion came on to be heard before this Court on April 17, 1939; and was granted and an order duly signed. Said motion papers and order which are on file herein are hereby made a part hereof.

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On April 17, 1939, the then pending appeals as consolidated, from all orders on allowances, appeared on the calendar of this Court and I was present in Court on that day. The record on appeal had not yet been settled or filed and the attorney for appellant RFC requested an adjournment. Percival E. Jackson, attorney for himself and other appellees, advised this Court he was ready to argue the appeals and opposed such application for an adjournment. This Court, however, adjourned the appeals to May 15, 1939. Briefs were, thereafter, filed by appellants and appellees and on May 19, 1939, said appeals, as consolidated, were again on the day calendar of this Court but were not reached for argument until May 22, 1939 and were argued on that day and on May 23, 1939. The principal oral argument in opposition to the appeals of RFC and the New Corporation was made by Mr. Jackson. Mr. Jackson also filed an appellee's brief, as did Messrs. Jaffin & Klaber. Both Mr. Jackson and Messrs. Jaffin & Klaber, to-

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gether with the attorneys for two other Committees, also filed a joint brief on behalf of said appellees.

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As shown by the foregoing facts, the appeals which were argued before this Court on May 22 and 23, 1939, had previously been on the calendar of this Court or before this Court upon motion on four separate days and the best evidence of the fact, that neither Mr. Jackson nor any other appellee or attorney raised any question of the validity of those appeals because leave to appeal had not been obtained, is the many briefs of the appellees on file in this Court, none of which raise any such question.

In addition to RFC and the New Corporation, the following parties, attorneys or law firms are appellants in the appeals herein from orders on allowances (some of which appeals were decided *In re Prudence-Bonds Corporation*, 106 F. (2d) 44):

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Harry H. Oshrin, Esq. (notice of appeal dated March 16, 1939, Vol. 1, paper 31);

Alfred T. Davison, Esq. (notice of appeal dated March 18, 1939, Vol. 1, paper 33);

Prudence Bondholders Protective Association (notice of appeal dated March 20, 1939, Vol. 1, paper 34);

Leon London, Esq., Alfred E. Herz, Esq., Alexander E. Klupt, Esq., and McKercher & Link, Esqs., (notice of appeal dated March 20, 1939, Vol. 1, paper 35);

William T. Cowin, as Trustee of The Prudence Company, Inc. (notice of appeal dated March 22, 1939, Vol. 1, paper 38);

Lawrence R. Condon, Esq., (notice of appeal dated March 22, 1939, Vol. 1, paper 41);

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Edward Endelman and Jacob A. Freedman (notice of appeal dated March 22, 1939, Endelman printed record on appeal);

Archibald Palmer, Esq., (notice of appeal dated March 23, 1939, Vol. 1, paper 42);

Brooklyn Trust Company and Cullen & Dykman, its attorneys (notice of appeal dated March 21, 1939, Vol. 1, paper 37, and notice of appeal dated November 8, 1939, Vol. A, paper 8);

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Charles H. Kelby, as Trustee of New York Investors, Inc. (notice of appeal dated November 14, 1939, Vol. A, paper 9);

City Bank Farmers Trust Company and Delafield, Marsh, Porter & Hope, its attorneys (notice of appeal dated March 21, 1939, Vol. 1, paper 36, and notice of appeal dated November 14, 1939, Vol. A, paper 10);

The Chase National Bank of the City of New York and Milbank, Tweed & Hope, its attorneys (notice of appeal dated November 17, 1939, Vol. A, paper 11);

Manufacturers Trust Company and Newman & Bisco, its attorneys (notice of appeal dated March 22, 1939, Vol. 1, paper 40, and notice of appeal dated November 15, 1939, Vol. A, paper 12);

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President and Directors of the Manhattan Company (notices of appeal dated March 17, 1939, Vol. 1, paper 3, and notice of appeal dated November 20, 1939, Vol. A, paper 13);

Simpson Thacher & Bartlett, Esqs. (notice of appeal dated March 22, 1939, Vol. 1, paper 39, and notice of appeal dated November 22, 1939, Vol. A, paper 14);

Carter, Ledyard & Milburn, Esqs., (notice of appeal dated March 17, 1938, Vol. 1, paper 32, and notice of appeal dated November 16, 1939, Vol. A, paper 15);

Larkin, Rathbone & Perry, Esqs. (notice of appeal dated November 20, 1939, Vol. A, paper 16);

The Marine Midland Trust Company of New York and Sullivan & Cromwell, its attorneys (notice of appeal dated November 28, 1939, Vol. A, paper 17).

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None of the foregoing appellants specifically applied to this Court for leave to appeal.

WHEREFORE, your deponent on behalf of appellants RFC and the New Corporation respectfully prays, that the motions to dismiss appeals be denied.

CHARLES M. McCARTY.

(Sworn to March 22, 1940).

Majority opinion of C. C. A. 2d on motions to dismiss
appeals.

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UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

No. 229—October Term, 1939

(Motion argued March 18, 1940. Decided April 5, 1940.)

[CAPTION]

Appeals from the District Court of the United States for
the Eastern District of New York.

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On motions to dismiss for lack of jurisdiction. Appeals
dismissed.

Before:

SWAN, AUGUSTUS N. HAND and PATTERSON,

Circuit Judges.

PERCIVAL E. JACKSON and CLINTON T. ROE, GEORGE M.
HAFFIN and LEONARD KLABER, for the motions.

JAMES F. DEALY, CHARLES M. MCCARTY, IRVING L.

SCHANZER and J. M. RICHARDSON LYETH, in
opposition.

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SWAN, Circuit Judge:

This case embraces a large number of appeals from orders granting or refusing allowances of compensation or reimbursement in a corporate reorganization proceeding which was initiated in 1934 pursuant to section 77B of the Bankruptcy Act. 11 U. S. C. A. Sec. 207. All the appeals

958 were taken after the Chandler Act was in effect. Orders of consolidation have been entered by this court directing that the appeals be heard upon a consolidated and supplemental record. The first group of appeals was argued in May 1939, and an order was entered on the appeal of Bank of Manhattan Company and others in the same position, directing the district court to determine the allowances to be awarded the corporate trustees and their attorneys; decision of the other appeals—those relating to allowances to committees and their attorneys—was held in abeyance. *In re Prudence-Bonds Corporation*, 106 F. (2d) 44. In compliance with our direction the district court passed upon the applications for allowance by the corporate trustees and their attorneys by its order of November 6, 1939. This order was brought to
 959 our attention by a supplemental record. Argument on this second group of appeals was had February 16, 1940. While the case was under advisement as to both groups of appeals, the Supreme Court, on March 11, 1940 handed down its decision in *The Dickinson Industrial Site Inc. v. Cowan*. Thereupon certain of the appellees moved for dismissal of the appeals for want of jurisdiction. Even in the absence of such motion this court would be obliged to consider the question of its own jurisdiction in the light of the *Dickinson* decision.

960 The *Dickinson* case holds that appeals from orders granting or refusing allowances of compensation or reimbursement in corporate reorganizations must be taken under section 250 of the Chandler Act, 52 Stat. 901, and "may be had only at the discretion of" the appellate court. This court had previously held that appeals from such orders, where the amount involved exceeded \$500, could be taken as of right under section 24(a) and required no allowance by the appellate court. *London v. O'Dougherty*, 102 F. (2d) 524. In reliance upon that decision each of the appeals at bar was taken by filing a notice of appeal in the district court, and no application for leave to appeal was made to this court at any time. Consequently the question arises whether this

court has jurisdiction to consider the merits or must dismiss the appeals for failure of the appellants to comply with section 250. 961

Section 250 provides that appeals of the character of those under discussion "may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals." This language may well mean that both the taking and the allowance of the appeal must be within the time limited by the Act; that is, the 30 or 40 days specified in section 25(a). 52 Stat. 855. We should not hesitate, however, to hold that a request for allowance within the time limited would serve to give the court jurisdiction, although the request was acted upon later. See *In re Foster Construction Corp.*, 49 F. (2d) 213 (C. C. A. 2). But even if the time limitation modifies only the verb "taken," the question remains whether an appeal which lies only in the discretion of the appellate court can be said to be taken "in the manner and within the time provided for appeals" by merely filing a notice of appeal in the district court. The phrase "in the manner" can only refer back to section 24(b), which reads: "Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal." The language is so general as to leave at large "the form and manner of an appeal," whether it be an appeal as of right or one requiring allowance of the appellate court. However, section 24(b) is obviously derived from similar language in section 24(b) of the Bankruptcy Act as amended by the Act of May 27, 1926, 44 Stat. 664, which has received judicial interpretation. 962 963

The first sentence of the section as amended declared that circuit courts of appeal shall have jurisdiction to revise in matter of law the "proceedings" of the courts of bankruptcy. The second sentence read as follows:

"Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 25 () to be allowed in the discretion of the appellate court."

- 964 Prior to the 1926 amendment "controversies" were reviewable in matter of law and fact by appeal, and "proceedings" were reviewable in matter of law by petition to revise. The amendment did away with the petition to revise. It did not change the nature of the review of "proceedings" (still confined to matter of law) but directed that it should be had "in the form and manner of an appeal" and "be allowed in the discretion of the appellate court." Section 24(c), 44 Stat. 665, provided that all appeals should be taken within 30 days. In construing the 1926 amendment it was universally held that appeals under section 24(a), required a petition for appeal to be filed in the district court within 30 days from entry of the order appealed from; while in discretionary appeals under section 24(b) the application for allowance must be made to the appellate court within such 30 days. Unless such timely application was made, the appellate court lacked jurisdiction. As this court said in its opinion in *In re Torgovnick*, 49 F. (2d) 210, 211, "it is abundantly settled that application to this court for leave to appeal must be made within thirty days after entry of the order, and that allowance by the District Court will not serve." Numerous cases from other circuits were cited in support of this statement. See also *Robie v. Hart, Schaffner & Marx*, 40 F. (2d) 871 (C. C. A. 8); *In re Federal Photo Engraving Corp.*, 54 F. (2d) 628 (C. C. A. 2); *Holmes v. Davison*, 84 F. (2d) 111 (C. C. A. 9); *Meyer v. Kenmore Hotel Co.*, 297 U. S. 160, and cases cited therein. After the enactment of section 77B it was authoritatively determined that an order making or refusing an allowance of attorney's fees was appealable only under section 24(b). *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172, affirmed a decision of the seventh circuit holding that the court lacked jurisdiction where no application for allowance of the appeal had been made to it.
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With the foregoing judicial history as to the interpretation of the 1926 amendment of section 24(b), we do not think it possible to hold that an appeal under the Chandler

Act, taken as of right by filing a notice of appeal in the district court in a case requiring allowance by the appellate court, gives that court jurisdiction to allow it at any time, although no application for allowance was made within the time prescribed for taking an appeal. It is true the fifth circuit appears to have done this in two cases. - *Baxter v. Savings Bank*, 92 F. (2d) 404; *Wilson v. Alliance Life Ins. Co.*, 102 F. (2d) 365. But those cases contain no discussion of the problem and no reference to the court's own ruling to the contrary in construing section 24(b) as amended in 1926. *Shoreland Co. v. Conklin*, 30 F. (2d) 489 (C. C. A. 5). 967

Order 36 of the General Orders in Bankruptcy effective February 13, 1939—a date prior to any of the appeals in the case at bar—deals with appeals as follows:

“Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States.” 968

Rule 73(a) of the Rules of Civil Procedure declares that when an appeal is permitted by law a party may appeal, within the time prescribed, by filing with the district court a notice of appeal. Failure to take further steps is not jurisdictional, but is ground only for such remedies as are specified in the rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal. It is to be observed that neither in Order 36 nor in Rule 73 is any distinction made between appeals as of right and appeals discretionary with the appellate court. The former General Order 36 likewise made no such distinction*; nevertheless the cases already 969

* Prior to the 1939 revision Order XXXVI of General Orders in Bankruptcy provided:

“1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.”

970 cited show that an appeal granted by the district judge would not serve for a discretionary appeal under section 24(b). It is true that discretionary appeals at that time brought up for review only matter of law, and that orders now appealable under section 250 of the Chandler Act bring up both law and fact, as does an appeal of right under section 24(a). But the fact that both types of appeal provide the same breadth of review, does not appear to be a relevant consideration in determining the "manner" of taking a discretionary appeal. While it may be argued that the new General Order, incorporating Rule 73, contemplates only one "manner" of taking an appeal, the Supreme Court can hardly have meant that in appeals lying in the discretion of the appellate court a notice of appeal filed in the district court should be the correct procedure for taking the appeal.

971 Such a contention flies in the face not only of the former practice under the 1926 amendment but also of the *Dickinson* case itself, where the very point urged for dismissal was that the appellants had not filed notice of appeal in the district court. Where an appeal is discretionary with the appellate court, we are reluctantly forced to the conclusion that the appeal is taken in a jurisdiction sense only by filing in the circuit court of appeals, within the time prescribed in section 25(a), some paper which serves as a request to that court for leave to appeal.

972 The other arguments advanced in opposition to granting the motions at bar will not withstand scrutiny: (a) The recent decision of the Supreme Court in *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U. S. 371, deals with the subject of collateral attack upon a judgment of an appellate court; it has nothing to do with the problem at bar, where our jurisdiction is attacked directly. (b) Arguments based on *Taylor v. Voss*, 271 U. S. 176, and similar cases, are not persuasive that an appeal as of right will serve as an application to the appellate court for leave to appeal. Cf. *In re Kenmore Granville Hotel Co.*, 90 F. (2d) 151, 152 (C. C. A. 7). The statute construed in the *Taylor* case contained no

provision that petitions to revise were to be allowed in the discretion of the appellate court. It was apparently the practice to file petitions to revise in the circuit court of appeals, but we have found nothing to indicate that any order granting leave to file the petition was required. See *In re B. & R. Glove Corp.*, 279 F. 372, 374 (C. C. A. 2); Rule 16 of this court, printed in Collier, Bankruptcy, 13th ed. p. 2984. 973

(c) The argument that the motion for leave to consolidate the appeals was equivalent to a motion for leave to appeal belies the facts. The appellants did not seek to have us allow the appeals, for they believed it unnecessary in view of our *London* decision; and in granting the motion we exercised no discretion with respect to allowance of the appeals for the same reason. (d) To protect the appellants merely because they were misled by our erroneous construction of the statute, now overruled by the Supreme Court, would require us to go contrary to elementary principles governing appellate jurisdiction. See *Alaska Packers v. Pillsbury*, 301 U. S. 174. 974

Finally, it is argued on behalf of the appellants who are corporate trustees, that their appeals in part are not governed by section 250 but lie as of right, because part of their claim for compensation is for services under the trust indentures and was secured by lien thereunder until the corporate trustees were induced to turn over the collateral upon the understanding that their liens would be protected and continued. An order determining the amount of compensation secured by a lien is literally within the terms of section 250 as an order "making allowances of compensation or reimbursement." There would seem to be as much reason for an appeal from such an order to be discretionary as in the case of an order allowing fees which are unsecured. If the order deals with both types of compensation, as does the order under consideration, it is extremely unlikely that Congress meant that two appeals should be necessary to bring it up for review; one taken as of right, the other by leave of court. Article XIII of Chapter X of the Chandler 975

976 Act deals comprehensively with compensation and allowances. Included therein is section 242(1) which specifically mentions the compensation and reimbursement of an indenture trustee and makes no distinction between lien and non-lien services. Section 250, dealing with appeals, must embrace all appeals from orders making or refusing allowances authorized by other sections of the article. We believe section 250 is applicable to all parts of the order of November 6th. So much of the order as defers payment of the lien compensation awarded the corporate trustees is but incidental to the order of allowance and is likewise governed by section 250.

977 Believing that this court is without jurisdiction to allow the appeals at this late day, we are constrained to grant the motions for dismissal of the appeals to which they are directed, and to dismiss of our own motion the other appeals herein.

It is so ordered.

Dissenting opinion of Judge A. N. Hand on motions to dismiss appeals.

AUGUSTUS N. HAND, Circuit Judge (dissenting):

978 It is with misgiving that I dissent from the conclusion reached by the majority of the court to the effect that the appeals in the foregoing proceeding must be dismissed for lack of jurisdiction for the conclusion my brethren have reached is in accord with numerous decisions in the United States Courts of Appeals. The Fifth Circuit, however, recently denied motions to dismiss appeals perfected under Section 24(a) in *Baxter v. Savings Bank*, 92 F. (2d) 404, and *Wallace v. Alliance Life Ins. Co.*, 102 F. (2d) 365, and treated appeals attempted under Section 24(a) without obtaining leave as though taken under Section 24(b) where leave was required.

The appeals here involve orders fixing compensation to the aggregate of hundreds of thousands of dollars. There is serious dispute both over the denial of compensation to some of the parties and over the amounts allowed to others. The awards affect great numbers of holders of participation certificates in one of the most extensive mortgage guaranty enterprises in New York. If a review of the orders may not be had the failure to obtain it will not be due to any neglect of the parties, but solely to their inevitable reliance upon our decision in *London v. O'Dougherty*, 102 F. (2d) 524, which controlled the practice in this court until it was held erroneous by the Supreme Court in *Dickinson Industrial Site Inc. v. Cowan*, handed down on March 11, 1940.

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Not only are the awards of compensation so substantial as to be very important to persons interested in the Prudence Bonds Corporation, but the question whether this court has or has not acquired jurisdiction over an appeal where a party has taken timely steps to institute it is one of general interest and is one which I believe the Supreme Court has never conclusively determined. In *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172, the Supreme Court did hold that the Circuit Court of Appeals of the Seventh Circuit rightly dismissed an appeal which had been taken as though a matter of right, when it properly lay only under Section 24(b) of the Bankruptcy Act where leave had to be obtained. The decision, however, was not placed by the Supreme Court on lack of jurisdiction but upon failure to conform to statutory requirements. Under Section 250 of the Chandler Act the appeal in the present case should have been taken by applying to this court for leave so that the mere filing of a notice of appeal in the District Court without petition to this court for leave was clearly irregular. Yet it does not follow that this court is entirely lacking in jurisdiction over the appeal. In *Bryan v. Bernheimer*, 181 U. S. 188; *Holden v. Stratton*, 191 U. S. 115, and *Taylor v. Voss*, 271 U. S. 176, the Supreme Court treated appeals taken as a matter of right and petitions to revise under

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982 Section 24(b) as sufficient to sustain jurisdiction over the appeals, whatever might be the proper mode of review, and authorized such additional steps as might be necessary to perfect the appeal. In other words, under those decisions, we may allow the appeals in the present case, as we certainly should do if the majority thought jurisdiction existed upon which further action might be founded. Although in most cases we should refuse to exercise our jurisdiction if the deviation from the correct procedure were not completely justified, the rigorous rule against permitting appeals where the time to institute them has elapsed would be sufficiently preserved if no more should be required to create jurisdiction than the filing of a notice of appeal. This would seem to be in conformity with the spirit of Rule 73(a) 983 of the new rules.

The recent decision of the Supreme Court in *Alaska Packers v. Pillsbury*, 301 U. S. 174, may be thought to indicate that the filing in this court of a petition for allowance of an appeal is a jurisdictional requirement. But in that case the court only held that the Ninth Circuit was without power to make a rule effecting appeals in admiralty by means of the mere filing of a notice of appeal where a statute in effect forbade such an appeal unless it were allowed after application duly made. The consideration of the case was apparently limited to the effect of the rule and the Supreme Court never dealt with the question whether the Circuit Court of Appeals could have sent the case back to the District Court to allow the appeal if it thought best. The decision only forbade the Circuit Court of Appeals from making 984 a prospective rule covering all appeals in admiralty and precluding the District Court from exercising any discretion as to whether a particular appeal should be allowed or not.

In my opinion the motion to dismiss should be denied and the various appeals allowed.

Order of C. C. A. 2d dismissing appeals and for mandate.

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UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

[CAPTION]

SIRS:

PLEASE TAKE NOTICE that the within is a true copy of a proposed order in the above entitled matter which will be lodged with the Clerk of the United States Circuit Court of Appeals for the Second Circuit at his office in the United States Courthouse, Foley Square, Borough of Manhattan, City, County and State of New York, on the 19th day of April, 1940 at 10:30 o'clock in the forenoon of that day, for transmission by him to the above named court at the time fixed by it for the signing of an order on its decision dated April 5, 1940, dismissing appeals herein.

986

Dated, New York, N. Y., April 16, 1940.

Yours, etc.,

JAMES F. DEALY,
Attorney for Appellant, Recon-
struction Finance Corporation,
Office & P. O. Address,

30 Broad Street,
New York, N. Y.

987

CHARLES M. MCCARTY,
Attorney for Appellant, Pru-
dence-Bonds Corporation,
(New Corporation),
Office & P. O. Address,
100 East 42nd Street,
New York, N. Y.

The foregoing notice is addressed to all parties in interest.

988 UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House in the City of New York, on the 23 day of April, one thousand nine hundred and forty.

Present:

989 Hon. THOMAS W. SWAN,
Hon. AUGUSTUS N. HAND,
Hon. ROBERT P. PATTERSON.
Circuit Judges.

[CAPTION]

990 A motion having been made in this Court by Prudenece Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, Esqs., its attorneys, by notice of motion dated November 30, 1939, to dismiss the appeals of Reconstruction Finance Corporation, an intervenor herein (hereinafter referred to as "RFC"), and Prudence-Bonds Corporation, the New Corporation formed pursuant to the Plans of Reorganization confirmed in this proceeding (hereinafter referred to as the "New Corporation"), from the order of the United States District Court for the Eastern District of New York, made and entered February 14, 1939, granting allowances in the aggregate sum of \$65,720.05 to said moving parties, and said motion having come on to be heard before this Court on December 4, 1939, and having been denied by order of this Court made December 7, 1939;

And a further motion having been made herein by the said parties, by notice of motion dated March 12, 1940, for

reargument of their aforesaid motion to dismiss said appeals, and a motion also having been made herein by Independent Prudence Bondholders Protective Committee and George M. Jaffin and Leonard Klaber, Esqs., its attorneys, by notice of motion dated March 13, 1940, to dismiss the appeals of RFC and the New Corporation from the order of the District Court made and entered February 21, 1939, granting allowances in the aggregate sum of \$28,056.78 to said moving parties; 991

AND said motions having come on to be heard before this Court on March 18, 1940, and after hearing Percival E. Jackson and George M. Jaffin, Esqs., of counsel for said moving parties respectively, in support of said motions, and James F. Dealy, Esq., attorney for Reconstruction Finance Corporation, Charles M. McCarty, Esq., attorney for the New Corporation, Edward Endelman and Jacob A. Freedman, Esqs., Pro Se, by Edward Endelman, Esq., of counsel, Irving L. Schanzer, Esq., of counsel for William T. Cowin, as Trustee of The Prudence Company, Inc., and J. M. Richardson Lyeth, Esq., of counsel for President and Directors of the Manhattan Company, in opposition to said motions; 992

AND it appearing that in reliance upon the decision of this Court in *London v. O'Dougherty*, 102 F. (2d) 524, none of the appellants named in the notices of appeal hereinafter mentioned, made application to this Court within the time within which said appeals were required to be taken, for leave to take any of said appeals; 993

Now, upon the following papers, to wit;

(1) Notice of motion of Prudence Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, Esqs. its attorneys, dated March 12, 1940, the affidavit of Percival E. Jackson, verified March 12, 1940, and the affidavit of Clinton T. Roe, verified March 22, 1940;

(2) Notice of motion of Prudence Securities Advisory Group and Percival E. Jackson and Clinton T.

994

Roe, Esqs., its attorneys, dated November 30, 1939, the affidavit of Percival E. Jackson, verified November 30, 1939, and the order of this Court made December 7, 1939, denying said motion;

(3) Notice of motion of Independent Prudence Bondholders Protective Committee and George M. Jaffin and Leonard Klaber, Esqs., its attorneys, dated March 13, 1940, and the affidavits of Leonard Klaber, verified March 13, 1940 and March 22, 1940;

(4) Affidavit of James F. Dealy, verified March 18, 1940; and affidavits of Charles M. McCarty, verified March 18, 1940 and March 22, 1940;

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(5) Sixteen (16) orders of the District Court, made and entered February 14, 16 and 21, 1939, respectively (Vol. 1, papers 47 to 61; Endelman Rec., fols. 483 to 492); being all the orders appealed from in the first group of appeals herein, which were argued on May 22 and May 23, 1939;

(6) Two orders of the District Court, made March 15, 1939, granting leave to RFC and the New Corporation to take appeals from various of the orders mentioned in "(5)" above, and the orders to show cause, the petitions of RFC and the New Corporation and the affidavit of Charles H. Kelby, verified March 14, 1939, upon which said two orders of March 15, 1939 were made (Vol. 1, papers 43 to 45);

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(7) Fourteen (14) notices of appeal of RFC, filed in the office of the Clerk of the District Court, on March 15, 1939 (Vol. 1, papers 17 to 30);

(8) Fifteen (15) notices of appeal of the New Corporation, filed in the office of the Clerk of the District Court, on March 15, 1939 (Vol. 1, papers 2 to 16);

(9) Notice of appeal of Harry H. Oshrin, filed in the office of the Clerk of the District Court, on March 21, 1939 (Vol. 1, paper 31);

(10) Notice of appeal of President and Directors of the Manhattan Company and Carter, Ledyard & Milburn, Esqs., filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 32);

(11) Notice of appeal of Alfred T. Davison, Esq., filed in the office of the Clerk of the District Court, on March 20, 1939 (Vol. 1, paper 33); 997

(12) Notice of appeal of Prudence Bondholders Protective Association, filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 34);

(13) Notice of appeal of Leon London, Esq., Alfred E. Herz, Esq., Alexander E. Klupt, Esq., and McKercher & Link, Esqs., filed in the office of the Clerk of the District Court, on March 22, 1939 (Vol. 1, paper 35);

(14) Notice of appeal of City Bank Farmers Trust Company and Delafield, Marsh, Porter & Hope, Esqs., filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 36);

(15) Notice of appeal of Brooklyn Trust Company and Cullen & Dykman, Esqs., filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 37); 998

(16) Notice of appeal of William T. Cowin, as Trustee of The Prudence Company, Inc., filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 38);

(17) Notice of appeal of Simpson Thacher & Bartlett, Esqs., filed in the office of the Clerk of the District Court, on March 29, 1939 (Vol. 1, paper 39);

(18) Notice of appeal of Manufacturers Trust Company and Newman & Bisco, Esqs., filed in the office of the Clerk of the District Court, on March 24, 1939 (Vol. 1, paper 40); 999

(19) Notice of appeal of Lawrence R. Condon, Esq., filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 41);

(20) Notice of appeal of Archibald Palmer, Esq., filed in the office of the Clerk of the District Court, on March 23, 1939 (Vol. 1, paper 42);

(21) Notice of appeal of Edward Endelman and Jacob A. Freedman, Esqs., filed in the office of the Clerk of the District Court, on March 22, 1939 (Endelman Rec., fol. 493-498);

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(22) Order to show cause, dated March 16, 1939, signed by Hon. Harrie B. Chase of this Court, on application by the New Corporation for order consolidating appeals and to have them heard upon the original papers of the District Court, the petition of the New Corporation, verified March 16, 1939, upon which said application was made, and the note of issue on said application, filed herein March 17, 1939;

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(23) Order to show cause, dated March 16, 1939, signed by Hon. Harrie B. Chase of this Court, on application by RFC for order consolidating appeals and to have them heard upon the original papers of the District Court, the affidavit of Jerome Thralls, verified March 16, 1939, upon which said application was made, and the note of issue on said application, filed herein March 17, 1939;

(24) Order of this Court made March 22, 1939, consolidating appeals taken by the RFC and the New Corporation and ordering that they be heard upon the original papers of the District Court;

(25) Notice of motion of the New Corporation, dated April 6, 1939, for order consolidating the appeal of Edward Endelman and Jacob A. Freedman, Esqs., with the appeals consolidated by order of this Court, made March 22, 1939, the affidavit of Charles M. McCarty, verified April 6, 1939, in support of said motion, the affidavit of Edward Endelman and Jacob A. Freedman, verified April 10, 1939, in opposition to said motion, and the order of this court made April 10, 1939, granting said motion;

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(26) Notice of motion of President and Directors of the Manhattan Company, dated April 12, 1939, for order consolidating the appeals of said appellant and other parties with the appeals of RFC and the New Corporation, the affidavit of J. M. Richardson Lyeth, verified April 12, 1939, in support of said motion, and the order of this Court made April 20, 1939, granting said motion;

(27) Decision of this Court, filed July 26, 1939;

(28) Mandate of this Court, dated August 14, 1939 (Supp. rec., paper 1);

(29) Order of the District Court, made September 18, 1939 (Supp. Rec., paper 3), making the mandate of this Court the order of the District Court; 1003

(30) Order of the District Court made and entered November 6, 1939, appealed from in the second group of appeals herein, which were argued on February 16, 1940 (Supp. Rec., paper 5);

(31) Two orders of the District Court, made November 20, 1939, granting leave to RFC and the New Corporation to appeal from said order made November 6, 1939, and the orders to show cause and the respective petitions of RFC and the New Corporation upon which said two orders of November 20, 1939 were made (Vol. A, papers 3 to 4; 6 to 7);

(32) Notice of appeal of RFC, filed in the office of the Clerk of the District Court, on November 30, 1939 (Vol. A, paper 2); 1004

(33) Notice of appeal of the New Corporation, filed in the office of the Clerk of the District Court, on November 30, 1939 (Vol. A, paper 5);

(34) Notice of appeal of Brooklyn Trust Company and Cullen & Dykman, Esqs., filed in the office of the Clerk of the District Court, on November 9, 1939 (Vol. A, paper 8);

(35) Notice of appeal of Charles H. Kelby, as Trustee of New York Investors, Inc., filed in the office of the Clerk of the District Court, on November 14, 1939 (Vol. A, paper 9);

(36) Notice of appeal of City Bank Farmers Trust Company and Delafield, Marsh, Porter & Hope, Esqs., filed in the office of the Clerk of the District Court, on November 16, 1939 (Vol. A, paper 10); 1005

(37) Notice of appeal of The Chase National Bank of the City of New York and Milbank, Tweed & Hope, Esqs., filed in the office of the Clerk of the District Court, on November 18, 1939 (Vol. A, paper 11);

(38) Notice of appeal of Manufacturers Trust Company and Newman & Bisco, Esqs., filed in the office of the

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Clerk of the District Court, on November 21, 1939 (Vol. A, paper 12);

(39) Notice of appeal of President and Directors of the Manhattan Company, filed in the office of the Clerk of the District Court, on November 24, 1939 (Vol. A, paper 13);

(40) Notice of appeal of Simpson Thacher & Bartlett, Esqs., filed in the office of the Clerk of the District Court, on December 6, 1939 (Vol. A, paper 14);

(41) Notice of appeal of Carter, Ledyard & Milburn, Esqs., filed in the office of the Clerk of the District Court, on November 22, 1939 (Vol. A, paper 15);

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(42) Notice of appeal of Larkin, Rathbone & Perry, Esqs., filed in the office of the Clerk of the District Court, on November 21, 1939 (Vol. A, paper 16);

(43) Notice of appeal of The Marine Midland Trust Company of New York and Sullivan & Cromwell, Esqs., filed in the office of the Clerk of the District Court, on November 30, 1939 (Vol. A, paper 17);

(44) Order to show cause, dated January 2, 1940, signed by Hon. Learned Hand of this Court, on application by RFC for order directing that the appeals from the order of November 6, 1939, be heard upon the original papers of the District Court, the affidavit of James F. Dealy, verified January 2, 1940, upon which said application was made, and the order of this Court made January 8, 1940, granting said application;

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being the only papers which were considered by this Court upon and in deciding the aforesaid motions to dismiss appeals and in making this order; and due deliberation having been had thereon, and upon filing the opinions of this Court dated April 5, 1940; it is

ORDERED, that the aforesaid motions of Prudence Securities Advisory Group and Percival E. Jackson and Clinton T. Roe, Esqs., its attorneys, and of Independent Prudence Bondholders Protective Committee and George M. Jaffin and Leonard Klaber, Esqs., its attorneys, be and the same

hereby are granted, and the appeals of RFC and the New Corporation, against which said motions were directed, be and the same hereby are dismissed; and, upon the Court's own motion, it is further

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ORDERED, that all of the remaining appeals herein covered by the notices of appeal hereinabove referred to, be and the same hereby are also dismissed. Further ordered that a mandate issue accordingly.

THOMAS W. SWAN,
AUGUSTUS N. HAND,
ROBERT P. PATTERSON.

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Clerk's Certificate as to proceedings in Circuit Court of Appeals.

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF NEW YORK

I, D. E. ROBERTS, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 154, inclusive, contain true and complete copies of originals thereof on file in said Court, in the case of

1013

In the Matter

of

Prudence-Bonds Corporation,
Debtor,

In the Matter of the application for
allowances for services rendered
and reimbursement for expenses
incurred Reconstruction Finance
Corporation, Prudence-Bonds Cor-
poration (New Corporation)

Appellants.

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as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-fifth day of April, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fourth.

[SEAL]

D. E. ROBERTS

Clerk.

SUPREME COURT OF THE UNITED STATES

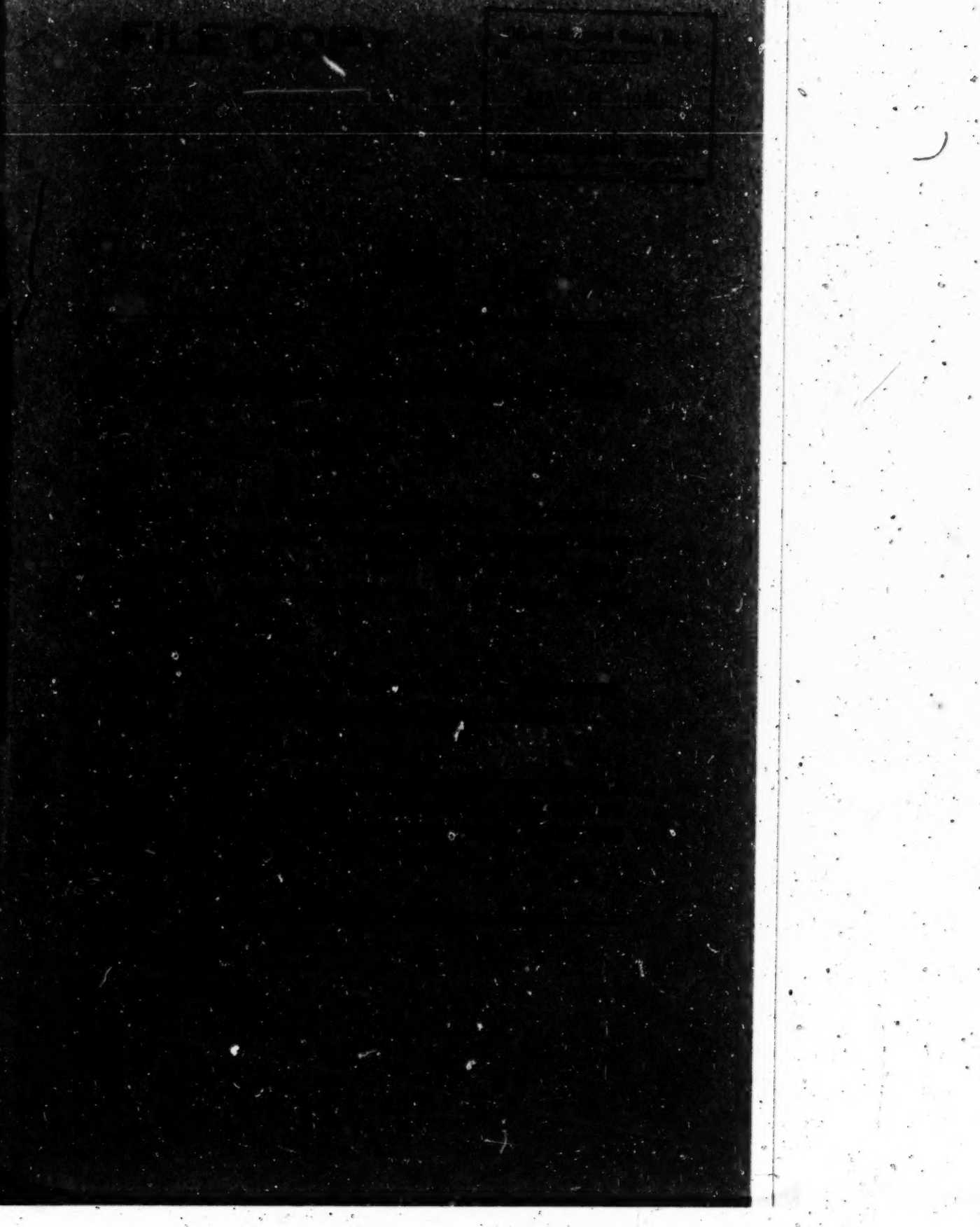
Order allowing certiorari

Filed June 3, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-
BONDS CORPORATION, PRESIDENT AND DIRECTORS
OF THE MANHATTAN COMPANY, AND THE MARINE
MIDLAND TRUST COMPANY OF NEW YORK, PETI-
TIONERS

v.

PRUDENCE SECURITIES ADVISORY GROUP, INDEPEND-
ENT PRUDENCE BONDHOLDERS COMMITTEE, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

The petitioners, Reconstruction Finance Corporation (hereinafter referred to as "RFC"), Prudence-Bonds Corporation (hereinafter referred to as the "New Corporation"), President and Directors of the Manhattan Company, and The Marine Midland Trust Company of New York, respectfully pray that a writ of certiorari issue to review the order or decree of the United States Circuit Court of Appeals for the Second Circuit entered in the above cause on April 23, 1940, dismissing for want

of jurisdiction a large number of appeals from orders making allowances in a reorganization proceeding.

OPINIONS BELOW

The opinions of the Circuit Court of Appeals for the Second Circuit (R. 319-328)¹ are not yet reported.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on April 23, 1940 (R. 330-337). The jurisdiction of this Court is invoked under Section 34 (c) of the Bankruptcy Act and under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Timely notices of appeal from orders making allowances in a reorganization proceeding were filed with the District Court in reliance upon a decision of the court below denying an application for leave to appeal on the ground that such appeals lay as a matter of right and therefore should be taken in the manner here followed. These appeals were heard on the merits and were submitted to the court for decision. Thereafter, this Court resolved a conflict between the decision relied on in taking the appeals and a later decision of another court, by

¹Record references are to pages of the Proposed Record, submitted herewith on motion of the petitioners for leave to proceed on an abbreviated printed record. See *infra*, pp. 17-22.

holding that appeals from orders making allowances were discretionary with the Circuit Court of Appeals. The questions are:²

1. Was the failure to apply to the court below for leave within the appeal period a jurisdictional defect requiring the dismissal of the appeals?

2. Was the court below compelled, under Section 250 of the Bankruptcy Act, to dismiss the appeals because application for leave to appeal was not made within the appeal period?

3. Was the court below compelled to give retroactive effect to the subsequent decision of this Court and to dismiss the appeals for want of jurisdiction?

STATUTE INVOLVED

The pertinent provisions of the Bankruptcy Act, as amended, are found in the Appendix, *infra*, pp. 15-16.

STATEMENT

In the course of the reorganization of Prudence-Bonds Corporation, under Section 77B of the Bankruptcy Act, the District Court by 16 orders awarded allowances in excess of \$1,105,000 (R. 1-49; 166-182); payable from trust funds securing bonds of the Debtor held by over 35,000 bondholders

² An additional question which will be urged in the argument on the merits is whether, in any event, the court below had jurisdiction over certain of the appeals in view of its order consolidating them and ordering them to be heard on the original papers of the District Court, which was made upon an application filed within the time provided for taking appeals.

(R. 73, 77, 199). By some of these orders, in respects not involved in this petition, the District Court also denied various applications for allowances. This petition involves 54 appeals relating to the former orders.³

The appeals were all taken by filing notices of appeal in the District Court (R. 92-160; 189; 207-221; 301-302). This was in reliance upon the controlling decision of the court below in *London v. O'Dougherty*, 102 F. (2d) 524, which denied an application for leave to appeal from reorganization

³ RFC and the New Corporation appealed from such orders (R. 92-141; 189, 207) on the ground that many of the awards and the total cost of reorganization were grossly excessive (R. 61, 78, 200, 247). They were permitted by the District Court to take the appeals (R. 84, 88, 188, 206) because the 77B trustees of the Debtor took the position that they had been superseded by the New Corporation and did not consider it their duty to oppose the applications (R. 83). The interests of RFC, an intervenor, in the allowances are (a) its unpaid balance of \$11,800,000 on a defaulted loan to The Prudence Company, Inc., holder of \$1,910,300 of the subordinated bonds of the Debtor, (b) its holdings, as owner or pledgee, of all the stock of Realty Associates, Inc., and Realty Associates Securities Corporation, which held \$1,300,000 of the Debtor's bonds, and of all the stock of the Debtor, and (c) the right given to the holder of the Debtor's stock under the general plan of reorganization to purchase shares in the reorganized company (R. 67-68).

The New Corporation has succeeded to all the rights of the Debtor's trustees in the trust funds securing the bonds (R. 75, 229).

President and Directors of the Manhattan Company and The Marine Midland Trust Company of New York appealed from the amounts awarded them as well as from the provision deferring payment of part thereof (R. 216, 221).

allowances on the ground that such leave was unnecessary.

Some of the appeals were argued in May, 1939, the balance in February, 1940 (R. 307, 310). After hearing argument on the first group of appeals the court below reversed that part of one of the orders appealed from whereby the District Court had deferred consideration of certain applications for allowances. Pending the further action which it directed the District Court to take, the court below reserved decision on the remaining appeals (R. 307-308). After the District Court had made a further order fixing additional allowances, but withholding payment of the major portion, appeals were taken from that order by the petitioners and others (R. 189, 207-222), and this group of appeals was likewise heard by the court below (R. 310).

On December 4, 1939, prior to the decision on the merits in any of the appeals, the Prudence Securities Advisory Group and its attorneys moved to dismiss the appeals of RFC and the New Corporation from the orders awarding allowances to the moving parties, upon the ground that no petition for leave to appeal had been filed in the Circuit Court of Appeals (R. 276-279). The motion was denied by order of December 7, 1939 (R. 279-280).

This Court in *Dickinson Industrial Site, Inc. v. Cowan*, No. 386, this Term,⁴ held on March 11, 1940,

⁴ The Circuit Court of Appeals for the Seventh Circuit announced its decision in the *Dickinson* case on May 22, 1939. 104 F. (2d) 771.

that under Section 250 of the Bankruptcy Act appeals from allowances in reorganization proceedings could be heard only in the discretion of the appellate court. After this decision, a motion for reargument of the motion to dismiss such appeals of RFC and the New Corporation was granted and heard, together with a motion to dismiss similar appeals made by another committee and its attorneys (R. 287-300).

The motions to dismiss were granted by a divided court on April 5, 1940. The court also dismissed the remainder of the appeals on its own motion (R. 326).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred: (1) in dismissing the appeals for want of jurisdiction; (2) in holding that the leave required by Section 250 cannot be granted unless applied for within the appeal period; (3) in giving retroactive effect to the *Dickinson* decision; and (4) in failing to view as granting leave its action consolidating a number of the appeals and ordering them heard on the original papers.

REASONS FOR GRANTING THE WRIT

1. Both the majority and dissenting opinions below recognize that the decision is in substantial conflict with two decisions of the United States Circuit Court of Appeals for the Fifth Circuit, in *Baxter v. Savings Bank*, 92 F. (2d) 404, and *Wilson v. Alliance Life Ins. Co.*, 102 F. (2d) 365 (R. 323-326).

In those cases appeals erroneously taken as of right under the former Section 24 (a) of the Bankruptcy Act, without obtaining leave of the appellate court, were considered as though taken under Section 24 (b) and allowed by the appellate court after expiration of the appeal period.

2. The decision below presents an important question of appellate procedure in bankruptcy and reorganization proceedings. Until this question is settled by this Court, substantial confusion will arise in a large class of appeals from orders in bankruptcy and corporate reorganization proceedings.

The decision below is not applicable to Section 250 alone but interjects jurisdictional flaws in any case where there is doubt whether the appeal lies as of right or in the discretion of the appellate court. Thus, there is already substantial doubt whether leave of the appellate court is not required in a large class of appeals under Section 24 (a) from orders involving no specific sums of money.*

Two Courts of Appeals have decided that application for leave to appeal is unnecessary in such cases. *Robertson v. Berger*, 102 F. (2d) 530 (C. C. A. 2d); *In re Winton Shirt Corporation*, 104 F.

* Examples are: Orders or decrees relating to jurisdiction, stays, contempt, injunctions, fines, imprisonment, appointment or removal of trustees, granting or denying discharges, dismissal of reorganization proceedings, confirmation of plans, directing liquidation, opening or closing meetings of creditors, and examinations under Section 21 (a).

(2d) 777 (C. C. A. 3d). But previously one of those Circuits had reached the opposite conclusion (*In re Winton Shirt Corporation, supra*, decision of May 1, 1939, later withdrawn and not reported). If the decision of the court below is to stand, no appellant can safely rely on any decision fixing the proper method of appeal until this Court decides the basic jurisdictional question involved. On the one hand, adequate protection could be obtained only by taking appeals, both by leave of the appellate court and by filing a notice of appeal in the District Court. On the other hand, decisions such as *London v. O'Dougherty*, 102 F. (2d) 524 (C. C. A. 2d), preclude that protection by denying applications for leave on the ground that they are unnecessary.

3. The court below felt that the result it reached was required by the decision of this Court in *Dickinson Industrial Site, Inc. v. Cowan*, No. 386, October Term, 1939, and by an analysis of the "judicial history as to the interpretation of the 1926 amendment of Section 24 (b)" (R. 322). But the *Dickinson* decision merely affirmed a decision holding that appeals from orders on allowances could be heard only in the discretion of the appellate court. This Court did not hold that the failure to apply for such discretionary leave within the time to take appeals would result in a jurisdictional defect, nor did it hold that Section 250 of the Bankruptcy Act required that such leave be sought within the time

to take appeals, where as here timely notices of appeal had been filed in the District Court.

Certainly the language of Section 250 compels no such a result. That section provides "Appeals may be taken * * * and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals * * *." Clearly, an appeal need not be "allowed" within the appeal period, and nothing in these words declares that, after an appeal has been taken in the form and manner of an appeal as required by Section 24 (b) of the Bankruptcy Act, the appellate jurisdiction in bankruptcy conferred by Section 24 (a) of the Bankruptcy Act is divested if leave to appeal is not sought within the appeal period.⁶ The ambiguity of Section 250 must be resolved in the light of the plain Congressional intention to eliminate the jurisdictional entrapments which have confused the history of bankruptcy appeals.⁷

⁶ General appellate jurisdiction in bankruptcy is conferred only by Section 24, which is made applicable as a general matter to appeals in reorganization proceedings by Section 121. See Senate Report No. 1916, 75th Cong., 3d Sess., p. 25.

⁷ Thus, the amendments as passed by the House contained a specific provision that failure to obtain allowance of an appeal did not defeat jurisdiction when the appellant had erroneously taken his appeal as of right. The Senate Judiciary Committee eliminated this provision, not because it felt such defects to be jurisdictional, but because it felt such a provision was an unnecessary caution after it had accomplished the same result by taking the more inclusive step of practically abolishing the distinction between appeals as of right and those in the discretion of the appellate court (S. Rept. No. 1916, *supra*, p. 4).

Moreover, under General Order in Bankruptcy No. 36, the new Federal Rules of Civil Procedure are applicable to appeals in bankruptcy and reorganization proceedings, and it is expressly provided in Rule 73 (a) that after an appeal is taken within the time provided for taking appeals by the filing of a notice of appeal in the District Court, failure to take any of the further steps to perfect such appeal shall not affect its validity.⁸

Even under the earlier provisions of the Bankruptcy Act this Court ruled in *Taylor v. Voss*, 271 U. S. 176, that, where the scope of review is not increased thereby, an error in selecting the method of appeal will be deemed merely a technical defect insufficient to defeat review.⁹ That decision must apply with added force after the recent amendments.

4. But even if the method of appeal adopted in this case would preclude review by the appellate court in appeals taken after the decision in the *Dickinson* case, it by no means follows that such a result is necessary here.

⁸ The rule of *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172, that appeals from allowance orders were discretionary with the appellate court, was expressly carried into the new amendments. *Dickinson Industrial Site, Inc. v. Cowan*, *supra*. But it by no means follows that the older rule as to the jurisdictional consequences of a technical error in taking the appeal was also adopted.

⁹ In *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172, unlike the *Taylor* case and unlike the present case, the erroneous method of appeal would have resulted in enlarging the scope of the review.

In this case appeals were taken and argued, briefs were filed, and the case was under submission at the time of the decision of this Court in the *Dickinson* case. Moreover, at the time that most of the appeals were taken to the court below, the *London* case stood without conflict as the sole guide to litigants. We submit that the court below was not compelled to apply the *Dickinson* case retroactively to the instant proceedings. The holding in the *Dickinson* case, that appeals from orders on allowance could be heard only in the discretion of the appellate court, is insufficient reason to sweep away the labor and expense of litigants incurred in reliance on a controlling decision of the court to which the appeal was to be taken. Only a rigid rule requiring that every decision of this Court be given an unrestrained retroactive application would justify the action of the court below. That there is no such undeviating requirement is indicated by *Chicot County District v. Bank*, 308 U. S. 371, 374, where, in considering the effect of a decision against the constitutionality of a federal statute, the Court stated:

* * * it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

It is submitted that the instant case presents a clear case where equity requires that the retroactive application of the *Dickinson* case be limited. Several of the state courts have ruled that, even in

questions of jurisdiction, an overruling decision need not be given retroactive application.¹⁰ *State ex rel. Department Stores Co. v. Haid*, 327 Mo. 567, 586; *Falconer v. Simmons*, 51 W. Va. 172, 176-179; see *Jones v. Woodstock Iron Co.*, 95 Ala. 551, 563; *Kelley v. Rhoads*, 7 Wyo. 237, 279; cf. *Harbert v. Railroad Co.*, 50 W. Va. 253, 255-256. We cannot believe that an orderly administration of justice requires a result so shocking as to destroy a right to appeal which was secured through the only method possible at the time the appeal was taken.¹¹

5. The awards of compensation are so substantial and affect so large a number of bondholders that it is of general interest that the court below be not deprived of its power to pass upon them.

¹⁰ The authorities relating to this question are collected in the memorandum filed by the Government in response to the petition for rehearing in *Helvering v. Gerhardt*, 304 U. S. 405, 305 U. S. 669, Nos. 779-781, October Term, 1937.

¹¹ *Alaska Packers v. Pillsbury*, 301 U. S. 174, relied on by the court below, does not compel that result. There the appellate court, although the statute specifically provided otherwise, made a rule of court that appellants in admiralty cases need not have their appeals allowed by the District Court. It thus attempted to deprive the District Court of a right given it by statute, and this Court held that an appeal taken without allowance of the District Court must be dismissed. Here, however, by the *London* decision the appellate court announced that all applications to it for leave were unnecessary. Its right to make that decision, even although it be later overruled, cannot be questioned. Thus the court itself renounced any discretion afforded to it by the statute to allow appeals which it was vested with jurisdiction to hear.

In the circumstances of this case, such a result would be a serious reproach to the judicial machinery. As was said by Judge Hand, dissenting below (R. 327):

The appeals here involve orders fixing compensation to the aggregate of hundreds of thousands of dollars. There is serious dispute both over the denial of compensation to some of the parties and over the amounts allowed to others. The awards affect great numbers of holders of participation certificates in one of the most extensive mortgage guaranty enterprises in New York. If a review of the orders may not be had the failure to obtain it will not be due to any neglect of the parties, but solely to their inevitable reliance upon our decision in *London v. O'Dougherty*, 102 F. (2d) 524, which controlled the practice in this court until it was held erroneous by the Supreme Court in *Dickinson Industrial Site, Inc., v. Cowan*, handed down on March 11, 1940.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted ¹²

¹² Since the court below refused to take jurisdiction, its ruling seems also to present an appropriate occasion for an application for a writ of mandamus. See *Ex parte Parker*, 120 U. S. 737; *Parker, Petitioner*, 131 U. S. 221; *Ex parte Harley-Davidson Motor Co.*, 259 U. S. 414. But, since review by writ of certiorari seems to afford an adequate remedy, it seems unnecessary, at least, at this juncture, to pursue the more unusual remedy of mandamus.

to review the order or decree of the court below so far as it dismisses the appeals taken by petitioners.

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MAY 1940.

APPENDIX

The Bankruptcy Act, as amended by the Act of June 22, 1938 (c. 575, 52 Stat. 840; 11 U. S. C. Supp. V, Secs. 47, 48, 521, 650):

SEC. 24. JURISDICTION OF APPELLATE COURTS.—a. The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury, shall extend to matters of law only: *Provided further,* That when any order, decree, or judgment involves less than \$500, an appeal therefrom may be taken only upon allowance of the appellate court.

b. Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in pro-

ceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

SEC. 25. PRACTICE ON APPEALS.—a. Appeals under this Act to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

* * * * *

SEC. 121. Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

* * * * *

SEC. 250. Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

**RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-
BONDS CORPORATION, PRESIDENT AND DIRECTORS
OF THE MANHATTAN COMPANY, AND THE MARINE
MIDLAND TRUST COMPANY OF NEW YORK, PETI-
TIONERS**

v.

**PRUDENCE SECURITIES ADVISORY GROUP, INDEPEND-
ENT PRUDENCE BONDHOLDERS COMMITTEE, ET AL.**

MOTION TO DISPENSE WITH PRINTING AND SERVICE OF PORTIONS OF RECORD

Counsel for the petitioners in this case file herewith their petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, accompanied by the original papers constituting the record of the proceedings in the case in the District Court, together with a certified copy of the record of the proceedings in the Circuit Court of Appeals. The record of original papers of the District Court was lodged with the Clerk of this Court pursuant to an order of the Presiding Judge in the Circuit Court of Appeals for the Second Circuit, entered on April 22, 1940.

1. The nature of this case and the questions presented by the petition for a writ of certiorari have been set forth in the foregoing petition for a writ of certiorari.

2. The order of the Circuit Court of Appeals sought to be reviewed enumerates the papers which were considered by the court in dismissing the appeals (R. 331-336). Petitioners now seek to be relieved of printing that part of the record of the proceedings in the District Court which was not considered by the Circuit Court of Appeals in dismissing the appeals as that part is not necessary to a consideration of the questions presented by the petition for a writ of certiorari herein.

The consolidated record consists of 25 separate volumes of original papers and exhibits and contains approximately 17,000 pages. Petitioners believe that no papers contained in the record of proceedings in the District Court other than those recited in the order of dismissal are required for a consideration of the questions presented by the petition for a writ of certiorari.

Petitioners have received an estimate that it would cost at least \$27,500 to print the record of the proceedings in the District Court.

3. Petitioner Reconstruction Finance Corporation, on April 16, 1940, mailed, to all parties affected by the dismissal of the appeals herein, a proposed stipulation that the record to be printed in this Court consist of the following: (a) the papers enumerated by the court below as those which it considered in dismissing the appeals; (b) the majority and dissenting opinions in the Circuit Court of Appeals; (c) the order dismissing the ap-

peals; (d) the order of the Circuit Court of Appeals staying the mandate; (e) the proposed stipulation; and (f) the Clerk's certificate. After the order of dismissal was signed, conformed copies were served on all interested parties. The allowances which were the subject of the appeals were awarded to over 50 different parties, committee members, attorneys, or accountants. A large number of such parties signed the stipulation in the form originally submitted. But various objections were immediately made by several interested parties to signing the proposed stipulation or to signing any stipulation respecting the record to be printed in this Court. Since that time petitioners have persistently and unsuccessfully endeavored to secure a stipulation from all interested parties.

A stay of the mandate on the decision of the Circuit Court of Appeals was promptly obtained by appellants. If the stay is to be continued pending application for a writ of certiorari, it will be necessary under the terms of the order granting the stay to file in the Circuit Court of Appeals within thirty days from the date of that order a certificate of the Clerk of this Court showing the filing of the petition for a writ of certiorari and proof by affidavit of compliance with Rule 38 (3) of the Rules of this Court. In the circumstances, petitioners believe that it is impossible within the time so limited to obtain a stipulation from all interested parties to dispense with the printing of portions of the record which are not necessary for a consideration of the questions presented by the petition for a writ of certiorari. Moreover, it seems unlikely that such a stipulation could be ob-

tained from all of the parties concerned within any period of time.

4. Petitioners have had printed a proposed record which includes all the papers enumerated in paragraph 3, above, except the order staying the mandate, but which omits those papers contained in the proceedings of the District Court which are not included among the papers upon which the order of dismissal was made. Petitioners are serving a copy of this proposed record on each of the respondents.

Petitioners move that they be relieved from printing any papers contained in the record of the proceedings of the District Court which are not included among the papers upon which the order of dismissal was made and that the case be considered upon the printed record, omitting all such unnecessary papers, filed herewith.

If any of the respondents object to consideration of the case on the merits upon a printed record so limited, we suggest that they include in their response to the petition for a writ of certiorari a specification of the additional matter which they believe should be included in the printed record, together with an explanation of its materiality to the issues presented by the petition. If this Court determines that any additional matter is material it could order the printing of such matter. Alternatively, the Court could direct that all the matter specified by respondents, if not unreasonably voluminous, be printed with costs to petitioners to be paid by the respondent or respondents who cause portions of the record to be printed which the Court should later determine to be unnecessary.

5. Section 250 provides that appeals from allowance orders "shall be summarily heard upon the original papers." Petitioners have been unable to file a certified transcript of the record of the proceedings in this case, in accordance with this Court's requirements, if they are applicable under Section 250. It has been impossible for petitioners to prepare a transcript of the record of the proceedings in the District Court for certification and filing in this Court for the reason that there are no copies of many voluminous exhibits to various petitions for allowances which form a large part of the record. In order to make copies of the missing papers there would be involved many weeks of delay and very substantial expense in having them first copied off in the Clerk's office and subsequently transcribed. In these circumstances, it is impossible because of the great hardship, expense, and time involved, for appellants to comply with the requirements of this Court with respect to the filing of a certified transcript of the record of the proceedings in the case. In lieu thereof petitioners have filed the original papers constituting the record of the proceedings in the District Court and a certified copy of the record of the proceedings in the Circuit Court of Appeals.

WHEREFORE, it is prayed: (a) That the Court rule that the accompanying petition for writ of certiorari is properly filed upon the record consisting of the original papers before the District Court and a certified copy of the record of proceedings in the Circuit Court of Appeals now on file in this Court; (b) that it consider the case upon the required number of printed copies of the record described in

paragraph 4 hereof and filed herewith; and (c) that it rule that the service aforementioned which petitioners are now making upon respondents of copies of this motion, the petition for writ of certiorari herein and the proposed printed record constitutes sufficient compliance with the rules of this Court.

Respectfully submitted.

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MAY 1940.

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FILE COPY



No. 69

In the Supreme Court of the United States

OCTOBER TERM, 1940

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE
BONDS CORPORATION, PRESIDENT AND DIRECTORS OF
THE MANHATTAN COMPANY, AND THE MARINE MID-
LAND TRUST COMPANY OF NEW YORK, PETITIONERS

PRUDENCE SECURITIES ADVISORY GROUP, LINDER AND
SON, PRUDENCE BONDHOLDERS COMMITTEE, ET AL.

VERSUS
THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 69

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-
BONDS CORPORATION, PRESIDENT AND DIRECTORS OF
THE MANHATTAN COMPANY, AND THE MARINE MID-
LAND TRUST COMPANY OF NEW YORK, PETITIONERS

v.

PRUDENCE SECURITIES ADVISORY GROUP, INDEPEND-
ENT PRUDENCE BONDHOLDERS COMMITTEE, ET AL.

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinions in the Circuit Court of Appeals for the Second Circuit (R. 319-328) are reported in 111 F. (2d) 37.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on April 23, 1940 (R. 330-337). The petition for a writ of certiorari was filed on May 8, 1940, and granted on June 3, 1940 (R. 330). The

jurisdiction of this Court is conferred by Section 24 (c) of the Bankruptcy Act and by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Timely notices of appeal from orders making allowances in a reorganization proceeding were filed with the District Court in reliance upon a decision of the court below in a previous case denying an application for leave to appeal on the ground that appeals from allowance orders lay as a matter of right and therefore should be taken in the manner here followed. The present appeals were heard on the merits and were submitted to the court for decision. Thereafter, this Court resolved a conflict between the decision relied on in taking the appeals and a later decision of the Circuit Court of Appeals for the Seventh Circuit, by holding that appeals from orders granting allowances are discretionary with the Circuit Court of Appeals. The questions are:

1. Was the failure to apply to the court below within the appeal period for an order allowing the appeals a jurisdictional defect requiring the dismissal of the appeals?
2. Was the court below compelled, under Section 250 of the Bankruptcy Act, to dismiss the appeals because application was not made within the appeal period to have the appeals allowed?

3. Did the papers filed with the court below during the appeal period regarding certain of the appeals constitute a sufficient basis for the exercise of that court's discretion to allow those appeals?

4. Was the court below compelled to give retroactive effect to the subsequent decision of this Court, if applicable, and to dismiss the appeals for want of jurisdiction?

STATUTES AND RULE INVOLVED

The pertinent provisions of the Bankruptcy Act, as amended, of the Judicial Code, and of Rule 73 (a) of the Federal Rules of Civil Procedure are found in Appendix A, *infra*, pp. 73-75.

STATEMENT

In the course of the reorganization of Prudence-Bonds Corporation, Debtor, under Section 77B of the Bankruptcy Act, the District Court by 16 orders awarded allowances in excess of \$1,105,000 (R. 1-49, 166-182), payable from trust funds securing bonds of the Debtor held by over 35,000 bondholders (R. 73, 77, 199, 306).¹ By some of these orders the District Court also denied various applications for allowances. A large number of appeals were taken by interested parties, both from those parts of the orders which allowed compensation and those parts which denied com-

¹ Additional amounts in excess of \$350,000 had previously been paid out for interim allowances and expenses (R. 62, 248, 306).

pensation (R. 52-160, 182-222). Involved in the present case are numerous appeals from the provision of the orders granting allowances.²

The questions here presented arise also in the following cases pending on petitions for writs of certiorari: *Manufacturers Trust Co. et al. v. Prudence Securities Advisory Group et al.*, No. 210; *Endelman et al. v. Prudence-Bonds Corp. et al.*, No. 211; *Kelby v. Prudence Securities Ad-*

² Reconstruction Finance Corporation (hereinafter referred to as RFC) and Prudence-Bonds Corporation, the new corporation formed pursuant to the plan of reorganization (hereinafter referred to as the New Corporation) appealed from such orders (R. 92-141, 189, 207) on the ground that many of the awards and the total cost of reorganization were grossly excessive (R. 61, 78, 200, 247). They were permitted by the District Court to take the appeals (R. 84, 88, 188, 206), because the 77B Trustees of the Debtor took the position that they had been superseded by the New Corporation and did not consider it their duty to oppose the applications (R. 83). The interests of RFC, an intervenor, in the allowances are (a) its unpaid balance of \$11,800,000 on a defaulted loan to The Prudence Company, Inc., holder of \$1,910,300 of the subordinated bonds of the Debtor, (b) its holdings, as owner or pledgee, of all the stock of Realty Associates, Inc., and Realty Associates Securities Corporation, which held \$1,300,000 of the Debtor's bonds, and (c) the right given to it under the general plan of reorganization, as holder of all the Debtor's stock, to purchase shares in the reorganized company (R. 67-68).

The New Corporation has succeeded to all the rights of the Debtor and its 77B Trustees in the trust funds securing the bonds (R. 75, 229).

The President and Directors of the Manhattan Company and The Marine Midland Trust Company of New York appealed from the amounts awarded them as well as from the provision deferring payment of part thereof (R. 216, 221).

visory Group et al., No. 214; *Prudence Realization Corp. v. Prudence-Bonds Corp. et al.*, No. 259; *Davison v. Prudence Securities Advisory Group et al.*, No. 273; *Denham v. Munson Line, Incorporated*, No. 284. All but the last-named case arose out of the reorganization of the Debtor.

The appeals were all taken by filing, within the appeal period provided by Section 25 (a) of the Bankruptcy Act, notices of appeal in the District Court (R. 92-160, 189, 207-221, 301-302). This was in reliance upon the controlling decision of the court below in *London v. O'Dougherty*, 102 F. (2d) 524, which denied an application for leave to appeal from reorganization allowances on the ground that such leave was unnecessary.

Some of the appeals were argued in May 1939, the balance in February 1940 (R. 307, 310). After hearing argument on the first group of appeals the court below reversed that part of one of the orders appealed from whereby the District Court had deferred consideration of certain applications for allowances. Pending the further action which it directed the District Court to take (R. 162), the court below reserved decision on the remaining appeals (R. 307-308). After the District Court had made a further order fixing additional allowances, but withholding payment of the major portion, appeals were taken from that order by the petitioners and others (R. 189, 207-222), and this group of appeals was likewise heard by the court below (R. 310).

On December 4, 1939, prior to the decision on the merits in any of the appeals, the Prudence Securities Advisory Group and its attorneys moved to dismiss the appeals of RFC and the New Corporation from the orders awarding allowances to the moving parties, upon the ground that no petition for leave to appeal had been filed in the Circuit Court of Appeals (R. 276-279). This motion was based upon the contention that the court below should overrule its decision in *London v. O'Dougherty, supra*, in view of the subsequent decision of the Circuit Court of Appeals for the Seventh Circuit in *In re Albert Dickinson Co.*, 104 F. (2d) 771. The motion was denied by order of December 7, 1939 (R. 279-280).

On March 11, 1940, this Court, in reviewing the decision of the Circuit Court of Appeals for the Seventh Circuit in the *Dickinson* case, *sub nom. Dickinson Industrial Site v. Cowan*, 309 U. S. 382, held that under Section 250 of the Bankruptcy Act appeals from orders on allowances in reorganization proceedings could be heard only in the discretion of the appellate court. After this decision, a motion for reargument of the motion to dismiss the appeals of RFC and the New Corporation was granted and the motion to dismiss was heard, together with a similar motion to dismiss other appeals, made by another committee and its attorneys (R. 287-300). In affidavits submitted in opposition to these motions, RFC and the New Corporation asked that, if further application to have the

appeals allowed should be deemed necessary, such an application be deemed made by them on the basis of the papers theretofore filed in the appellate court (R. 310, 312).³

The motions to dismiss were granted by a divided court on April 5, 1940. The court also dismissed the remainder of the appeals on its own motion (R. 326).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

- (1) In dismissing the appeals for want of jurisdiction;
- (2) In holding that an appeal under Section 250 cannot be allowed unless allowance is applied for within the appeal period;
- (3) In failing to treat the appeals taken as of right as appeals in the discretion of the appellate court;
- (4) In failing to hold that the papers filed with it during the appeal period regarding certain of the appeals constituted a sufficient basis for the exercise of its discretion to allow those appeals; and
- (5) In giving retroactive effect to the *Dickinson* decision.

³ As more fully developed later in this brief, RFC and the New Corporation had also, within the appeal period, made motions to consolidate certain of the appeals and to have them heard on the original papers. The affidavits in support of the motions set forth all material facts which would have been relevant for an application for allowance of the appeals (see pp. 47-48, *infra*).

SUMMARY OF ARGUMENT

In *Dickinson Industrial Site v. Cowan*, 309 U. S. 382, this Court held that appeals under Section 250 of the Bankruptcy Act from orders on allowances may be heard only in the discretion of the Circuit Court of Appeals, and affirmed an order refusing to dismiss an appeal in which leave of the appellate court had been sought and obtained. In the present case, the majority of the court below held that they were constrained, under the *Dickinson* decision, to dismiss the appeals for want of jurisdiction because no formal application for leave to have the appeals allowed was made during the appeal period.

I

In appeals under Section 250, the filing of an application to the Circuit Court of Appeals within the appeal period to have the appeal allowed is not a jurisdictional requirement. Section 250 provides that appeals from orders on allowances shall be "taken" by the appellants "in the manner and within the time provided for appeals" by the Bankruptcy Act. The manner and time of taking bankruptcy appeals are specified in Sections 24 and 25 of the Act, and in Rule 73 (a) of the new Federal Rules of Civil Procedure, which, by virtue of General Order in Bankruptcy No. 36, governs bankruptcy as well as civil proceedings.

Under the provisions of Sections 24 and 25 and of Rule 73 (a), an appeal, whether by right or by leave, is taken by filing in the District Court a "notice of appeal"; once this notice is filed, jurisdiction of the appeal vests in the appellate court. The filing of an application for allowance of the appeal in the case of discretionary appeals is not the "taking" of the appeal, but is simply a further step necessary to secure review. Under the specific provisions of Rule 73 (a), failure to take such a step does not affect the validity of the appeal, but is simply the occasion for such action as the appellate court may deem appropriate. Plainly, therefore, petitioners' action in filing timely notices of appeal conferred jurisdiction on the court below and that jurisdiction was not divested simply because no formal application to have the appeals allowed was filed within the appeal period.

This conclusion is supported by the legislative history of the 1938 amendments to the Bankruptcy Act, which shows that one of the principal purposes sought to be achieved by the amendments was to abrogate the useless formal distinctions between appeals as of right and discretionary appeals which had theretofore caused serious jurisdictional difficulties. To construe the Act so as to prevent the application of Rule 73 (a) to discretionary appeals under Section 250 would be contrary to the expressed policy of Congress and would revive one of the jurisdictional pitfalls which Congress was seeking to eliminate.

Dickinson Industrial Site v. Cowan, supra, does not require such a construction of the Act. The only question there considered was whether orders on allowances were reviewable under Section 250 in the discretion of the appellate court or as a matter of right. This Court held that such appeals were reviewable only in the discretion of the appellate court and accordingly affirmed an order refusing to dismiss an appeal in which leave of the appellate court had been in fact sought and obtained. This Court did not hold that the filing of an application within the appeal period to have the appeal allowed was a jurisdictional requirement or that the jurisdiction of the appellate court could not be invoked by the filing of a timely notice of appeal in the District Court. At the time the appeal in that case was taken, the new Rules, providing that a party may take an appeal by filing such a notice, had not yet been made applicable to bankruptcy appeals, and the appeal could only be taken by filing a petition for leave to appeal.

II

Even if it be held that Rule 73 (a) is inapplicable to appeals under Section 250 and that the proper procedure for taking such appeals is to file, within the appeal period, an application to have the appeal allowed, it would still not follow that the court below could not, in the exercise of its discretion, have heard the appeals. Petitioners' error, if

error there was, was at most a technical defect in procedure; it related to the form of their appeals rather than to matters of substance, and it was caused solely by the erroneous decision of the court below in *London v. O'Dougherty*, 102 F. (2d) 524. Under these conditions, only an archaic insistence upon matters of form could serve to defeat the power of the court below to allow review.

Even under the old Bankruptcy Act, no such rigid adherence to form was required. In considering appeals under Sections 24 (a) and 24 (b) of the Act, prior to their amendment in 1938, this Court and the Circuit Courts of Appeals consistently ruled that, where the scope of review was not enlarged thereby, an error in selecting the method of appeal should be deemed merely a technical defect, insufficient to defeat review. This rule applies with added force since the enactment of the Chandler Act and the promulgation of the new Rules, one of the purposes of which was to eliminate procedural entrapments. And the rule is directly applicable here since the questions before the court below would have been precisely the same, whether the appeals were treated as taken of right or as taken in the discretion of the appellate court. In these circumstances there is no reason of substance why the appeals taken in the form in which appeals as of right are taken should not have been treated as appeals to be allowed or not in the discretion of the appellate court and disposed of as such.

III

RFC and the New Corporation filed with the court below, within the appeal period, motions to consolidate certain of the appeals and to have them heard on the original papers, which motions were granted by the court below. The motions contained prayers for general relief. By virtue of the motion papers, the court below had before it all of the relevant information which would have been contained in an application to have the appeals allowed and, on the basis of those papers, it exercised jurisdiction in the case by ordering the appeals consolidated and heard on the original papers. Since the appellate court was apprised of all the relevant facts by papers duly filed in that court within the appeal period, all the substantial requirements for treating those appeals as taken in the discretion of the appellate court were satisfied.

IV

Even if the Court should hold that the method of appeal adopted in this case would preclude review by the appellate court in appeals taken after the decision in the *Dickinson* case, such a result is not necessary here. In the present case the appeals were taken and argued, briefs were filed, and the case was under submission on the merits at the time of the decision in the *Dickinson* case. The method of taking the appeals complied in all respects with the only procedure available to petition-

ers under the controlling decision of the court below in *London v. O'Dougherty, supra*; indeed, at the time most of the appeals were taken, the *London* case stood without conflict as the sole guide to litigants. Under these circumstances, we believe it plain that the court below was not compelled to apply, and should not have applied, the *Dickinson* decision retroactively to the instant proceedings.

This Court has never had occasion to decide expressly that the federal courts have the power, where equity requires, to limit the retrospective effect of an overruling decision of this Court. Decisions in closely analogous situations, however, impel the conclusion that the power of the courts to overrule prior decisions carries with it as a necessary incident the power in particular cases to prevent an overruling decision from being an instrument of injustice or hardship. And if the power exists, it should clearly be exercised in this case where petitioners' transgression, if any, was due entirely to the erroneous decision of the court below in the *London* case, and where a limitation on the retroactive application of the *Dickinson* decision would not deprive respondents of any substantial right.

ARGUMENT

In *Dickinson Industrial Site v. Cowan*, 309 U. S. 382, this Court held that appeals under Section 250 of the Bankruptcy Act from orders on allowances may be heard only in the discretion of the Circuit

Court of Appeals, and affirmed an order refusing to dismiss an appeal in which leave of the appellate court had been sought and obtained. In the present case, the majority of the court below held that they were constrained, under the *Dickinson* decision, to dismiss the appeals for want of jurisdiction because no formal application to have the appeals allowed had been made to the Circuit Court of Appeals within the time for taking appeals. It is implicit in both the majority and dissenting opinions that, if the court had believed that it had jurisdiction to hear the appeals, it would have done so.

It is our view, which will be developed more fully hereinafter, that the court below erred in believing that the *Dickinson* case decided the question here presented. The *Dickinson* case did not hold, or require a holding, that allowance of the appeal must be sought within the appeal period, or that if the statute requires leaves to be sought within that

* The majority of the court stated (R. 324) that they were "reluctantly forced" to the conclusion that the court had no jurisdiction (R. 324) and that they were therefore "constrained" (R. 326) to dismiss the appeals. Judge A. N. Hand in his dissenting opinion, after referring to *Bryan v. Bernheimer*, 181 U. S. 188; *Holden v. Stratton*, 191 U. S. 115; and *Taylor v. Voss*, 271 U. S. 176, stated (R. 32): "* * * under those decisions we may allow the appeals in the present case, as we certainly should do if the majority thought jurisdiction existed upon which further action might be founded." [Italics supplied.]

period, failure to comply with this statutory requirement is a jurisdictional defect necessitating dismissal of the appeal. When the appeal in the *Dickinson* case was taken to the Circuit Court of Appeals, the Federal Rules of Civil Procedure, substituting the notice of appeal for the customary petition for appeal and order allowing the appeal, had not yet become applicable to bankruptcy proceedings.

It is our position (1) that where, as here, a timely notice of appeal has been filed in the District Court pursuant to the new Federal Rules of Civil Procedure, Section 250 of the Bankruptcy Act does not require that an application for allowance of the appeal be filed within the appeal period in order to vest the appellate court with jurisdiction; (2) that the court below had discretionary power to entertain the appeals even if, under Section 250, an application for allowance of the appeals should have been filed within the appeal period; (3) that the papers filed during the appeal period in the court below regarding certain of the appeals constituted a sufficient basis for the exercise of the court's discretion to allow those appeals; and (4) that in any event, if the rule of the *Dickinson* case is contrary to the foregoing contentions, that decision should not have been applied retroactively to the present case.

UNDER SECTION 250 OF THE BANKRUPTCY ACT THE
FILING WITHIN THE APPEAL PERIOD OF AN APPLICATION
TO HAVE THE APPEAL ALLOWED IS NOT A JURIS-
DICTIONAL REQUIREMENT

Section 250 of the Bankruptcy Act, which became effective on September 22, 1938, provides as follows:

SEC. 250. Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers (c. 575, 52 Stat. 840; 11 U. S. C., Supp. V, Sec. 650).

It seems plain that under this section appeals from orders on allowances need only be "taken to" the Circuit Court of Appeals "in the manner and within the time provided for appeals," and that they need not also be "allowed by" the court within the appeal period.⁵ The phrase "within the time provided for appeals by this Act," cannot be separated from the immediately preceding phrase "in

⁵ With respect to this matter the court below stated (R. 321): "We should not hesitate . . . to hold that a request for allowance within the time limit would serve to give the court jurisdiction, although the request was acted upon later."

the manner and"; both must modify the verb "allowed" or neither does. Sections 24 (b) and 25 of the Act provide for both the manner and time of *taking* an appeal; no provision of the Act, however, specifies the "manner" in which an appeal shall be *allowed* by the appellate court. Since under the Act the phrase "in the manner" cannot modify the verb "allowed" and, therefore, must refer only to the verb "taken," the coordinate and conjoined phrase "within the time" must also be construed to modify only the verb "taken."

Even under Section 24 (b) of the Bankruptcy Act, prior to its amendment in 1938, it was held that an appeal by leave of the appellate court was timely if a petition to have the appeal allowed was filed within the appeal period, although not allowed within that period. *In re Foster Construction Corp.*, 49 F. (2d) 213 (C. C. A. 2d); cf. *United States v. Adams*, 6 Wall. 101; *Randall v. Foglesong*, 200 Fed. 741 (C. C. A. 6th); *Ross v. White*, 32 F. (2d) 750 (C. C. A. 6th). As pointed out in the *Foster Construction* case, any other rule would make the rights of appellants dependent upon the sittings of the appellate court and upon the length of the deliberations by that court necessary to dispose of the motion for leave to appeal.

The issue on this branch of the case, then, is simply whether the appellants have satisfied the requirement of Section 250 that appeals be "taken" by the appellants "in the manner and within the time provided for appeals" by the Act, so that the

appellate court had discretion to allow and hear the appeals.

A. *Under the Act and the Federal Rules of Civil Procedure, an appeal is "taken" by filing a notice of appeal with the district court.*

Section 250, as this Court held in *Dickinson Industrial Site v. Cowan, supra*, provides that appeals from orders on allowances require leave of the appellate court; it contains no provision as to how such a discretionary appeal shall be "taken." To the contrary, it states merely that appeals shall be taken "in the manner * * * provided for appeals by this Act." Thus, as the court below recognized (R. 321), there is necessarily made applicable to appeals under Section 250 the provisions of Sections 24 and 25, which are the only sections containing any provisions relating to procedure or jurisdiction on appeal.⁶ Section 24 (a) specifically

⁶ These sections, which are confined by their terms to bankruptcy proceedings, are made applicable to reorganization proceedings by Section 121 of the Act. See S. Rep. No. 1916, 75th Cong., 3rd Sess., p. 25.

The statement of this Court in *Dickinson Industrial Site v. Cowan, supra*, that appeals under Section 250 are "no longer dependent upon § 24" (309 U. S. at 385), when read in its context, means only that despite the provisions of Section 24 permitting appeals as a matter of right where more than \$500 is involved, the leave required by Section 250 must still be obtained. The statement was made in answer to the contention of the petitioners in the *Dickinson* case that Congress by Section 24 had created a single test as to whether or not leave of the appellate court was necessary; i. e., whether \$500 was involved.

confers appellate jurisdiction upon the circuit courts of appeals and Section 24 (b) provides that such appellate jurisdiction shall be exercised "by appeal and in the form and manner of an appeal." Section 25 provides that appeals shall be taken within 30 days after written notice of the entry of the judgment appealed from.⁷

Section 24 (b), by providing that appellate jurisdiction shall be exercised "by appeal and in the form and manner of an appeal," makes applicable Rule 73 (a) of the new Federal Rules of Civil Procedure since, by virtue of General Order in Bankruptcy No. 36,⁸ these Rules govern bankruptcy as well as civil proceedings. Rule 73 (a) provides as follows:

RULE 73. *Appeal to a Circuit Court of Appeals.*

(a) *How taken.*—When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review

⁷ If such notice be not served and filed, Section 25 provides that the appeal period shall be 40 days from the entry of the judgment.

⁸ General Order in Bankruptcy No. 36 provides that "Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States."

of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

Under these provisions, whether the review is to be had as a matter of right or in the discretion of the appellate court, an appeal is taken when the appellant files with the District Court a notice of appeal. Section 24 alone provides for the appellate jurisdiction of the Circuit Courts of Appeals in bankruptcy matters and it specifies that such jurisdiction "shall be exercised by appeal and in the form and manner of an appeal." And Rule 73 (a) provides that the form and manner of appeal shall be by filing with the District Court a notice of appeal. There is no provision in the Act or in the Rules for taking an appeal by filing with the appellate court an application to have the appeal allowed and no provision for the "form and manner" of such an application. Consequently, the application to have the appeal allowed is simply one of the "further steps to secure the review of the judgment," failure to take which, under Rule 73 (a), "does not affect the validity of the appeal but is ground only * * * for such action as the appellate court deems appropriate." In this view, the present appeals were timely since, as pointed out in the Statement, *supra*, p. 5, appellants filed

notices of appeal with the District Court within the appeal period provided by Section 25.

As we shall point out below, it was one of the purposes of the new Rules, in conjunction with which the 1938 amendments to the Act must be construed,* to provide for the taking of appeals in all cases by the filing of a "notice of appeal" and thus to abolish the old method, applicable in both appeals as of right and in discretionary appeals, of invoking appellate jurisdiction by filing

* The new Rules were adopted by this Court on December 20, 1937, and were presented to Congress at the beginning of the 1938 session, during which the Chandler Act was debated and enacted. They were to become effective automatically three months after the adjournment of the session (Rule 86). Rule 81 provided that this Court could make the Rules applicable to bankruptcy proceedings, and the Advisory Committee on the Rules, in a report to this Court of April 1937, recommended that they be made so applicable by amendment of the General Orders in Bankruptcy. This Court adopted that recommendation and made the new Rules applicable to bankruptcy proceedings by a revision of General Order in Bankruptcy No. 36, effective February 13, 1939.

Prior to its revision, General Order in Bankruptcy No. 36 provided that bankruptcy appeals were to be regulated by the rules governing appeals in equity and thus made applicable to bankruptcy appeals the provisions of the Equity Rules, which were supplanted by the new Federal Rules of Civil Procedure. Since this Court had made the old Equity Rules applicable to bankruptcy cases by General Order in Bankruptcy No. 36, Congress had every reason to believe that the new Rules of Civil Procedure would likewise be made applicable to bankruptcy appeals by amendment of the General Orders, which was done.

a petition for appeal and securing its allowance.¹⁰ The Rules therefore provide that every appeal is "taken" when the notice of appeal is filed in the District Court. The filing of this notice vests jurisdiction of the appeal in the Circuit Court of Appeals, which must hear the appeal if the appellant is entitled to appeal as of right, but which may refuse to allow it if it is discretionary. The important factor for purposes of this case, however, is that once the notice of appeal has been filed, the appeal, of whatever character it may be, is "taken" and jurisdiction of the case vests in the appellate court. Consequently, failure to take any of the further steps to perfect the appeal, such as filing an application for allowance, does not deprive the appellate court of jurisdiction to allow or hear the appeal in its discretion. Indeed, far from imposing as a jurisdictional requirement that an application to have the appeal allowed be filed within the appeal period, the Act and the Rules permit each of the Circuit Courts of Appeals to

¹⁰ The Advisory Committee on the Federal Rules of Civil Procedure specifically stated in the Notes to the Rules that Rule 73 (a) "supplants the petition for appeal, the order allowing an appeal, and the citation on appeal" and that it supersedes Section 228 of the Judicial Code, providing for the method of securing the allowance of appeals.

An example, not involving bankruptcy proceedings, but indicating the necessity of a petition for leave to appeal, prior to the new Rules, may be found in *Alaska Packers v. Pillsbury*, 301 U. S. 174, a decision holding that an appeal taken without seeking leave to appeal within the appeal period must be dismissed for want of jurisdiction.

prescribe, by rule or otherwise, the method to be followed in securing the allowance of discretionary appeals. And under Rule 73 (a), failure to file an application for allowance, or to comply with the method prescribed by the appellate court for securing allowance, does not affect the validity of the appeal but is simply occasion for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

No sound reason can be advanced why Rule 73 (a) should not apply to discretionary appeals as well as to other appeals in bankruptcy. There is no distinction drawn in the Act between the scope of review or jurisdiction of the appellate court in the case of appeals taken as of right and in the case of discretionary appeals, and no distinction is made in either the Act or the Rules between the procedures to be followed in taking such appeals. The application of Rule 73 (a) to appeals in bankruptcy which may be taken as a matter of right is not disputed.

B. Failure to file within the appeal period an application to have the appeal allowed does not divest the appellate court of jurisdiction

The majority of the court below, in holding that Rule 73 (a) was inapplicable, chose to base its decision upon the authority of a line of cases, decided before the enactment of the Chandler Act and the promulgation of the new Rules, which had held that Section 24 of the old Bankruptcy Act

imposed as a jurisdictional requirement that an application for leave to appeal be made within the appeal period. *In re Torgovnick*, 49 F. (2d) 211 (C. C. A. 2d); *Robie v. Hart, Schaffner & Marx*, 40 F. (2d) 871 (C. C. A. 8th); *In re Federal Photo Engraving Corp.*, 54 F. (2d) 628 (C. C. A. 2d); *Holmes v. Davidson*, 84 F. (2d) 111 (C. C. A. 9th); *Meyer v. Kenmore Granville Hotel Co.*, 297 U. S. 160; cf. *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172. The reliance of the court below upon this group of decisions was, we submit, fundamental error, because it completely disregarded the basic change in the manner of taking appeals which was made by the Chandler Act and the new Rules.

Analysis of the appeal provisions of the Bankruptcy Act and of the Judicial Code, prior to the 1938 amendments, shows that the "allowance" of appeals formerly served an entirely different function in appellate procedure than it serves under the Bankruptcy Act, as now amended, and under the new Rules. Under the present Act and the new Rules, a single method of invoking appellate jurisdiction is established, in which the "notice of appeal" is substituted for the petition for appeal and the allowance thereof; the legislative history of the 1938 amendments shows that Congress intended by this change to eliminate the jurisdictional pitfalls which were inherent in the old practice.

1. *Appellate procedure prior to the 1938 amendments and the new Rules.*—Prior to the 1938 amendments, appeals in bankruptcy cases were of two kinds. Under Section 24 (a) of the Act, the circuit courts of appeals were vested with appellate jurisdiction over “controversies arising in bankruptcy proceedings.” Such “controversies” were appealable as a matter of right and review could be had of both facts and law, but an appeal lay only from a final order. In sharp contrast was the appellate jurisdiction conferred by Section 24 (b), which related to appeals from “proceedings” of courts of bankruptcy. In the case of a “proceeding,” an appeal could be taken only with leave of the appellate court and was limited to questions of law, but either a final or an interlocutory order could be reviewed.

Because Section 24 (a) did not prescribe any method for invoking the appellate jurisdiction, appeals under that section were governed, pursuant to former General Order in Bankruptcy No. 36,¹¹ by the provisions of the Judicial Code applicable to equity cases. The appropriate procedure was to file a petition asking leave to appeal and to procure an order from either the district or a circuit judge “allowing” the appeal. 36 Stat. 1134, 43 Stat. 940, 28 U. S. C. §§ 228, 230; *Alaska*

¹¹ This General Order provided that “appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in equity in the courts of the United States.”

Packers v. Pillsbury, 301 U. S. 174; *Farmer's State Bank v. Thompson*, 261 Fed. 166 (C. C. A. 5th). Since the appeal was a matter of right, the "allowance" was merely a ministerial act. *Simpson v. First National Bank of Denver*, 129 Fed. 257 (C. C. A. 8th); *McCourt v. Singers-Bigger*, 150 Fed. 102 (C. C. A. 8th); *In re Graves*, 270 Fed. 181 (C. C. A. 1st). However, because of the mandatory language of Section 230 of the Judicial Code (c. 229, 43 Stat. 936, 940; 28 U. S. C., § 230), providing that no appeal should be allowed unless application therefor be made within three months after entry of the order sought to be reviewed, the filing of such a petition within the appeal period was indispensable to jurisdiction.¹² *Alaska Packers v. Pillsbury*, 301 U. S. 174; *McBee v. Palmer*, 73 F. (2d) 342 (C. C. A. 9th); *Robie v. Hart, Schaffner & Marx*, *supra*; *Ross v. White*, 32 F. (2d) 750 (C. C. A. 6th).

In appealing under Section 24 (b), review was originally sought by a "petition to revise," but by the amendment of 1926 (44 Stat. 664), the petition to revise was abolished and an appeal substituted

¹² Because of Section 25 (a) of the Bankruptcy Act, the appeal period in bankruptcy proceedings was limited to thirty days after entry of judgment, instead of the three months' period provided by Section 230 of the Judicial Code for appeals in civil actions. However, except for the length of the appeal period, the provisions of Section 230 were fully applicable to appeals under Section 24 (a) of the Bankruptcy Act. General Order in Bankruptcy No. 36; *McBee v. Palmer*, 73 F. 2d 342 (C. C. A. 9th).

therefor. The appeal, however, was only "to be allowed in the discretion of the appellate court." In this type of appeal, as in appeals under Section 24 (a), the filing of a petition for leave was the only way of invoking the appellate jurisdiction, and therefore the provisions of Section 24 (b) that the appellate courts should have "jurisdiction in equity" over appeals "to be allowed in the discretion of the appellate courts" were construed as making the filing of the petition within the appeal period an indispensable jurisdictional requirement. *Deeley v. Cincinnati Art Pub. Co.*, 23 F. (2d) 920 (C. C. A. 6th); *In re Torgovnick*, 49 F. (2d) 211 (C. C. A. 2d); *In re Western Women's Club*, 93 F. (2d) 189 (C. C. A. 9th); see Rules of the Circuit Court of Appeals for the Second Circuit, Rule 37. This conclusion followed in any event from the mandatory requirements of Section 230 of the Judicial Code, discussed above, which, under General Order in Bankruptcy No. 36, was equally applicable to appeals under Section 24 (b) as to those under Section 24 (a). *Remington on Bankruptcy* (4th ed.) Vol. 8, Sec. 3811.10. In appeals under Section 24 (b), however, allowance of the appeal was not merely a ministerial act, to be performed either by a district or circuit judge, as in the case of appeals under Section 24 (a); it was rather an exercise of discretion to be performed by the appellate court alone.

It is thus apparent that the only characteristic which was common to appeals under Section 24 (a)

and Section 24 (b) was that in both the filing of an application for leave to appeal was the act which initiated the appeal, and that therefore the filing of such an application within the appeal-period was a jurisdictional requirement. On the other hand, as we have seen, the character of the allowance was different, the method of procedure for securing the allowance was different and the types of orders and scope of questions reviewable were different. And because of these fundamental differences, it was generally held that the two types of appeals were mutually exclusive: a petition for appeal filed under Section 24 (a) could not serve as an application for leave to appeal under Section 24 (b), and *vice versa*.¹³

¹³ *Humbler v. Bankers' Trust*, 70 F. (2d) 265 (C. C. A. 6th); *Wingert v. Spread*, 70 F. (2d) 351 (C. C. A. 4th); *Schnurr v. Miller*, 49 F. (2d) 109 (C. C. A. 8th); *American State Bank v. Ullrich*, 28 F. (2d) 753 (C. C. A. 8th); *Broders v. Lage*, 25 F. (2d) 288 (C. C. A. 8th); *Deeley v. Cincinnati Art Publishing Co.*, 23 F. (2d) 920 (C. C. A. 6th). There were two exceptions to the strict rule of exclusiveness of the methods provided in Sections 24 (a) and 24 (b): (1) if an appeal was taken from a "proceeding" on a matter reviewable only on questions of law when a petition to revise was the proper method, nevertheless, if the questions of law were sufficiently presented in the record, the appellate court was permitted to treat the appeal as a petition to revise and to dispose of it accordingly (*Holden v. Stratton*, 191 U. S. 115, 118, 119; *Duryea Power Co. v. Sternbergh*, 218 U. S. 299, 301); and (2) when the facts were not in dispute, review could be sought by a petition for revision under § 24 (b) as well as by appeal under § 24 (a), even though the judgment appealed from was in a "controversy" as distinguished from a "proceeding." *Taylor v. Voss*, 271 U. S. 176.

This situation was thoroughly unsatisfactory. The distinction between "controversies" and "proceedings" was not clearly marked and in many instances there was immense difficulty in determining into which category a given case fell.¹⁴ The result was that in a great many cases meritorious appeals were dismissed simply because counsel had made an unfortunate guess as to which section of the statute would be held applicable. See, *e. g.*, cases cited footnote 13, p. 28, *supra*, and in Appendix to Br. in Opp. pp. 14-16. Another unfortunate result was a huge mass of fruitless litigation on the question of whether a given matter was a "controversy" or a "proceeding," a question of no substantive significance, but on the determination of which the validity of the appeal turned in any given case.

Quite naturally, therefore, when Congress undertook extensive revision of the Bankruptcy Act in 1938, Section 24 became a "storm center for the revisionists." *Dickinson Industrial Site v. Cowan*, 309 U. S. 382, 384. The legislative history of the 1938 amendments, as well as the provisions of the Federal Rules of Civil Procedure, show abundantly that it was the earnest desire of their draftsmen to avoid the harsh and arbitrary results which the courts had formerly been compelled to reach and to accomplish this by providing for a single method of appeal.

¹⁴ See Hunt, *Appeals from the District Courts to the Circuit Courts of Appeals in Bankruptcy Cases*, 42 Commercial L. J. 131.

2. *Legislative history of the 1938 amendments.*—

In the hearings on the 1938 amendments the evils of the existing appellate procedure were forcefully brought to the attention of Congress¹⁵ and several

¹⁵ *H. Hearings on H. R. 8046, 75 Cong., 1st Sess.*—Jacob I. Weinstein, a member of the National Bankruptcy Committee, testified: "There has been trouble in appellate practice because of this inherent distinction or difficulty of determining when you are permitted to take an appeal as of right and when you are required to take an appeal as by allowance by the circuit court: * * *. And sometimes counsel have been in a quandary to determine when it is a controversy arising out of a bankruptcy proceeding and when it is just a proceeding in bankruptcy" (p. 78). An article by Reuben G. Hunt thoroughly condemning the old practice was incorporated in the record (p. 214) and in his oral testimony Mr. Hunt referred to the old distinctions as "vexatious" and to the old practice as "archaic and unnecessary" (p. 214). Also incorporated in the record before the House Committee was the following statement from the opinion in *Jones v. Blair*, 242 Fed. 783 (C. C. A. 4th): "Indeed, it is a reproach to the administration of justice that appellate courts should be required to dismiss causes brought up for review merely because counsel have made a mistake as to purely formal matters. Rule and regularity in such matters are, of course, essential, but due observance of rules could always be enforced by the infliction of costs on the offending party. The difficulty of the bar and the bench in distinguishing and applying these methods we venture to think could be entirely removed so that the appellate courts could in every case decide the merits of the controversy if a simple method of appeal applicable to all cases legal and equitable and all issues arising in the bankruptcy were provided by rule of court under authority of statute, with the discretion of the court to inflict the payment of costs for a material departure from the rule" (p. 216).

S. Hearings on H. R. 8046, 75th Cong., 2d Sess.—Mr. Hunt testified: "Unfortunately, however, this vexatious distinction between controversies arising in bankruptcy proceedings and proceedings in bankruptcy proper—the result has been that

proposed amendments were submitted. All of these amendments sought either to abolish completely the distinction between "proceedings" and "controversies," or, in the alternative, to relieve against the procedural difficulties and, while maintaining the distinction for purposes of the scope of questions and types of orders reviewable, to remove questions as to form in determining whether jurisdiction had been invoked.¹⁵

many cases, especially what we might term the border line cases, have been appealed necessarily both ways, that is, as a matter of right by the allowance of the lower court, and as a matter of discretion by the allowance of the appellate court. All this has meant, of course, delay and extra expense. * * * Sometimes the party taking the appeal has made an excusable mistake and his appeal is dismissed for lack of jurisdiction; and the appellate court has now (sic) power to grant relief" (p. 53).

The testimony of William B. Henderson, a member of the American Bar Association Bankruptcy Committee, was to the same effect (p. 103).

Again, Mr. Hunt stated (p. 123): "* * * should there be any discretion on the part of anybody, the litigant should have a right to appeal without any technical restrictions upon such right."

¹⁶ Mr. Hunt's proposal abolished the distinction altogether. H. Hearings on H. R. 8046, 75th Cong., 1st Sess., p. 217. So did Mr. Henderson's proposed amendment, p. 223, and the draft submitted by the Los Angeles Credit Men's Association (p. 406).

The draftsmen of the House bill (H. R. 8046) retained the distinction for the purpose of restricting appeals as of right because "we were afraid ourselves that if we permitted an appeal as of right from every single administrative step in a proceeding that it would only delay and encumber the proceedings." H. Hearings on H. R. 8046, 75th Cong., 1st Sess., p. 79. (But see, *infra*, footnote 18.)

Divergent views were expressed as to whether all bankruptcy appeals should be reviewable as of right or whether some should be discretionary," but no voice was raised against the abolition of the unnecessary difficulties which sprang from the different forms of appeals. Accordingly, while the distinction between "controversies" and "proceedings" was maintained in the bill as passed by the House (H. R. 8046, 75th Cong., 1st Sess.), it was provided specifically that error in the form of an appeal should not affect the jurisdiction of the appellate court.¹⁹ The House bill retained this distinction, then, in order exclusively (1) to differentiate the scope of review in the two situations and (2) to allow the appellate court discretion to refuse to review "proceedings." Under the House bill, however, an application to the appellate court to have the appeal allowed was not a jurisdictional requirement; the bill expressly stated that "where, within the time limited for taking appeals, an appeal has been taken as of right instead of by

¹⁷ S. Hearings on H. R. 8046, 75th Cong., 2d Sess., p. 119.

¹⁸ Section 24 (b) of H. R. 8046: "*And provided further, That where, within the time limited for taking appeals, an appeal has been taken as of right instead of by allowance of the appellate court, the appellate court may in its discretion allow such appeal at any time before final determination with the same effect as if it had been duly allowed, when taken, and where, within the time limited for taking appeals, an appeal has been taken by allowance of the appellate court instead of as of right, the appellate court may in its discretion entertain and determine such appeal with the same effect as if it had been duly taken as of right.*"

allowance of the appellate court, the appellate court may in its discretion allow such appeal at any time before final determination with the same effect as if it had been duly allowed, when taken * * *." (Section 24 (b).)

The same result was achieved in a different manner by the Senate amendments to the House bill, which were ultimately embodied in the statute as enacted. Instead of retaining the distinction between "proceedings" and "controversies" and providing that mistakes in procedure should not deprive the appellate court of jurisdiction, the Senate abolished the distinction, except as to the types of orders reviewable.¹⁹ Having done so, it struck out as surplusage the provision in the House bill that mistakes of procedure should not affect jurisdiction. The Senate had the same purpose as the House to do away with the useless formal distinctions which had so frequently caused the dismissal of meritorious appeals. This is shown by the report of the Senate Judiciary Committee (S. Rep. No. 1916, 75th Cong., 3d Sess., p. 4):

The removal of the troublesome distinction [between appeals as of right and appeals by leave] will be a service to both bench and bar. *It is often difficult to determine the*

¹⁹ Under Section 24 (a) either interlocutory or final orders may be reviewed in *proceedings*, but apparently only final orders can be reviewed in *controversies*. But whatever the type of order reviewed, the appeal is taken in the same manner.

proper procedure under the present law and frequently appeals are taken in both ways in order to be certain. The House bill seeks to remedy this condition by providing that in the event of mistake the appellate court may consider the appeal as properly taken and proceed to a determination of the case. Your committee believes it is much better to eliminate the distinction altogether. (*Italics supplied.*)

See also the statement by Representative Chandler, in reporting on the changes made in conference, which is to the same effect (83 Cong. Rec. 9106, 75th Cong., 3d Sess.).

3. *Appellate procedure under the 1938 amendments and the new Rules.*—The fact that under Section 250 appeals from orders on allowances must be allowed by the appellate court,²⁰ is in no way inconsistent with the plain purpose of Congress to establish a single form and manner of appeal so as to avoid the harsh and arbitrary results which was one of the reasons for the 1938 amendments. As we have shown (*supra*, pp. 18 ff.), the form and manner of appeal under Section 250 is precisely the same as the form and manner of appeal under Section 24, appeals under Section 250 simply requiring as an additional step that, after the appeal has been taken by filing a notice of appeal, allowance of the appeal must be secured from the appellate court. The sole comment made by the Senate Judiciary

²⁰ Similarly, under Section 24 (a) appeals involving less than \$500 "may be taken only upon allowance of the appellate court."

Committee with respect to this section was that (S. Rep. No. 1916, 75th Cong., 3d Sess., p. 38):

Section 250, derived from section 77 (B) (c) (9), is intended to facilitate appeals from the grant or refusal of an allowance of compensation. These are to be disposed of without the necessity of a printed record.

There is nothing in the Act itself, in the legislative history of the Act, or in the new Rules, which in any way suggests that, if a notice of appeal is filed within the appeal period, appellant's failure to file an application for leave with the appellate court within that period is a jurisdictional defect.

The fact that Section 250 provides that appeals from orders on allowances must be "allowed" by the appellate court does not mean that Congress imposed as a jurisdictional requirement that an application for allowance be filed with the appellate court within the appeal period. Nor does it mean that the petition for allowance of the appeal, required under the old procedure, was carried over into the 1938 amendments. The insertion of the provision for allowance was plainly intended merely to permit the appellate court to exercise its discretion as to whether or not the appeal should be heard (cf. *Dickinson Industrial Site v. Cowan*, *supra*); that it was not intended to provide a separate procedure for vesting the appellate court with jurisdiction is shown by the

express provisions of the section that appeals shall be "taken" in the manner provided by the act.²¹

The contrary holding of the court below fails utterly to take into account the fundamental difference between the procedure for appeal at the present time and the procedure for appeal both prior and subsequent to the enactment of the Chandler Act, but prior to the amendment of General Order in Bankruptcy No. 36, making the new Rules applicable to bankruptcy cases. Prior to the enactment of the Chandler Act, as we have shown, *supra*, the filing of an application for leave to appeal within the appeal period was a jurisdic-

²¹ Even under the old procedure, the allowance of an appeal within the appeal period was not a jurisdictional requirement; as we have pointed out (p. 17, *supra*), the appeal was taken, and jurisdiction of the case vested in the Circuit Court of Appeals, as soon as the application for allowance was filed. Indeed, the appeal had to be "taken" before allowance, for otherwise the appellate court would have had no jurisdiction to determine the question of allowance. Consequently, even under the old procedure, the "allowance" was merely the exercise of the appellate court's discretion to hear the appeal; it was not an integral part of "taking" the appeal. Similarly, under the Act, as amended, the provision for allowance of the appeal must be construed, not as imposing a jurisdictional requirement for the taking of an appeal, but as giving the appellate court power in its discretion to refuse to hear the appeal. And plainly, if Section 250 does not make the allowance of an appeal a jurisdictional step in taking the appeal, there is no reason to believe that it made the filing of an application for allowance such a jurisdictional step; or, indeed, that a different procedure for taking appeals under Section 250 was contemplated than the procedure prescribed by Rule 73 (a) for all other bankruptcy appeals.

tional requirement, in appeals as of right because of the mandatory language of Section 230 of the Judicial Code, and in appeals by leave of the appellate court because under Section 24 (b) of the Bankruptcy Act and Section 230 of the Judicial Code, the application to the appellate court was the method of invoking the jurisdiction of that court. And the same procedure was necessarily followed during the short period between the enactment of the Chandler Act and the time when the new Rules became applicable to bankruptcy appeals, because the filing of an application for allowance was then the only "form and manner" of taking appeals. In contrast, the new Rules have eliminated the application for leave to appeal as the method of invoking appellate jurisdiction and have substituted therefor the filing of a "notice of appeal." Consequently, under the Chandler Act, operating in conjunction with the new Rules, the filing of the "notice of appeal" is the only jurisdictional requirement for taking appeals, and the application to have the appeal allowed, in discretionary appeals, becomes merely an additional step to be taken after jurisdiction has vested. In this view of the case it is unnecessary to determine when the petition for allowance of the appeal should be filed.²² It is important only that failure to file a

²² Undue delay in seeking allowance of a discretionary appeal may be guarded against by the Circuit Courts of Appeals through rule of court, and may be penalized through application of the sanctions provided for in Rule 73 (a) of the new Rules.

petition within the appeal period is not jurisdictionally fatal.

It is thus apparent that under the procedure prescribed by the Chandler Act and the new Rules, the reasons which formerly made the filing of an application for leave to appeal within the appeal period a jurisdictional requirement have entirely disappeared. To revive this requirement in the case of discretionary appeals, when the reasons for it have gone, as the court below did, is to attribute to Congress an irrational intent to maintain in discretionary appeals the very sort of jurisdictional entrapment which it specifically sought to eliminate in all bankruptcy appeals. This construction of the Act, we submit, has no warrant in the language of Section 250; it is in square conflict with the expressed Congressional policy of abrogating useless formal distinctions and of simplifying appellate procedure by providing for a single method of appeal.²³

²³ A construction of the Act which would prevent the application of Rule 73 (a) and thus require a different method of procedure for taking appeals as of right and for taking discretionary appeals would create substantial confusion in a large class of appeals under Section 24 (a) from orders involving no specific sums of money. It is not clear whether appeals from such orders may be taken as of right or are discretionary with the appellate court; the doubt arises under the proviso of Section 24 (a) that appeals from orders involving less than \$500 may be taken only upon allowance of the appellate court. Examples of such types of orders are: orders or decrees relating to jurisdiction, stays, contempt, injunctions, fines, imprisonment, appointment or

C. *The Dickinson case does not hold that the filing within the appeal period of an application to have the appeal allowed is a jurisdictional requirement*

The court below believed this Court's decision in *Dickinson Industrial Site v. Cowan, supra*, required the ruling that it lacked jurisdiction to hear the appeals because no application to have the appeal allowed had been filed within the appeal period. Such a ruling was, we believe, not required by the *Dickinson case*.

removal of trustees, granting or denying discharges, dismissal of reorganization proceedings, confirmation of plans, directing liquidation, opening or closing meetings of creditors, and examinations under Section 21 (a). Two Circuit Courts of Appeals have decided that an application for leave to appeal is unnecessary where no specific sum of money is involved. (*Robertson v. Berger*, 102 F. (2d) 530 (C. C. A. 2d); *In re Winton Shirt Corporation*, 104 F. (2d) 777 (C. C. A. 3d)), but previously one of those Circuits reached the opposite conclusion (*In re Winton Shirt Corporation*, decision of May 1, 1939, later withdrawn and not reported). Unless the Act be construed so as to provide for a single method of appeal, confusion will remain in this type of case until the exact scope of the proviso in Section 24 (a) is determined and litigants will be faced with the very type of jurisdictional pitfall which it was the purpose of the 1938 amendments to eliminate. In this situation, no appellant can safely rely on a decision of a Circuit Court of Appeals fixing the proper method of appeal. On the one hand, adequate protection could be obtained only by taking appeals, both by leave of the appellate court and by filing a notice of appeal in the District Court. On the other hand, decisions such as *London v. O'Dougherty*, 102 F. (2d) 524 (C. C. A. 2d), preclude that protection by denying applications for leave on the ground that they are unnecessary.

The only question considered in the *Dickinson* case was whether orders on allowances were reviewable under Section 250 in the discretion of the appellate court or as a matter of right. The respondents had taken an appeal under Section 250 by filing a petition for leave to appeal in the Circuit Court of Appeals, which the Circuit Court of Appeals had granted. The debtor company (petitioner) moved to dismiss the appeal on the ground that, under Section 250, appeal lay as a matter of right and that therefore appellants could only take their appeal by filing in the District Court a petition for appeal or a notice of appeal. The Circuit Court of Appeals denied the motion to dismiss and this Court affirmed, holding that the appeal lay only in the discretion of the appellate court and that that court had, therefore, properly entertained the appeal. This Court did not hold that appeals under Section 250 could only be taken by filing with the appellate court an application to have the appeal allowed, much less that the filing of such an application within the appeal period was an indispensable jurisdictional requirement where, as here, timely notices of appeal were filed in the District Court.²⁴

²⁴ The Court stated that the rule of *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172, that appeals from allowance orders were discretionary with the appellate court, was expressly carried over into Section 250 (309 U. S. at 385). But this statement certainly was not intended to, and did not, carry the implication that the older rule as to the jurisdictional consequences of a technical error in taking the appeal

The court below in the present case pointed out in its opinion that the respondents in the *Dickinson* case had not filed a notice of appeal in the District Court and that this Court had nonetheless held that the Circuit Court of Appeals had jurisdiction of the appeal; it drew from this the conclusion that it is not, as we urge, the filing in the District Court of the notice of appeal which vests the Circuit Court of Appeals with jurisdiction, but the filing in the Circuit Court of Appeals of the petition for leave to appeal.

The court below apparently overlooked the important fact that at the time that the appeal in the *Dickinson* case was taken, the new Rules had not yet been made applicable to bankruptcy proceedings.²⁵ Accordingly, the old procedure of filing a petition for leave to appeal in the appellate court was still the "form and manner" of taking an appeal which lay only in the discretion of the appellate court. The petition had to be filed within the appeal period, not, however, because of any jurisdictional requirement of Section 250, but because, under Section

was also embodied in the new Act. Nor is the *Shulman* case in any way inconsistent with our contentions, since that decision, of course, antedated not only the 1938 amendments to the Bankruptcy Act, but also the promulgation of the new Rules.

²⁵ The appeal to the Circuit Court of Appeals in the *Dickinson* case was taken on November 26, 1938. *In re Albert Dickinson Co.*, 104 F. (2d) 771, 773 (C. C. A. 7th). The new Rules did not become applicable to bankruptcy proceedings until February 13, 1939.

230 of the Judicial Code, this was then the only method of taking the appeal (see pp. 26-27, *supra*). Indeed, the respondents in the *Dickinson* case could not have taken their appeal by filing a notice of appeal in the District Court because at the time of the appeal in that case there was no provision authorizing that procedure in bankruptcy appeals. It necessarily followed, as this Court held, that respondents' failure to file a notice of appeal did not defeat the jurisdiction of the Circuit Court of Appeals.

Moreover, even if under the new Rules jurisdiction can still be vested in the Circuit Court of Appeals by filing a petition for leave to appeal in that court within the appeal period, without filing a notice of appeal in the District Court (*cf. Crump v. Hill*, 104 F. (2d) 36 (C. C. A. 5th)), it by no means follows that jurisdiction cannot also be vested in the Circuit Court of Appeals by filing a notice of appeal in the District Court within the appeal period without likewise filing within that period a petition in the appellate court to have the appeal allowed. Certainly there is nothing in the opinion in the *Dickinson* case which intimates that jurisdiction to entertain the appeal may only be had by petition for allowance filed within the appeal period. This Court merely tacitly assumed that the procedure followed by the respondents in that case was proper if the appeal was one which lay only in the discretion of the appellate court.

This assumption, clearly justified under the provisions then governing bankruptcy appeals, is plainly not authority for the proposition that the same procedure is proper under the new Rules, and much less for the proposition that, even if proper under the new Rules, it is the only procedure by which jurisdiction may be vested.

II

EVEN IF UNDER SECTION 250 AN APPLICATION TO HAVE THE APPEAL ALLOWED SHOULD BE FILED WITHIN THE APPEAL PERIOD, THE COURT BELOW HAD POWER IN ITS DISCRETION TO ENTERTAIN THE APPEALS.

Even if the contentions advanced in Point I should be rejected and this Court should hold that the proper procedure for taking an appeal under Section 250 is to file with the appellate court within the appeal period an application to have the appeal allowed, it would still by no means follow that the court below could not, in the exercise of its discretion, have heard the appeals. Petitioners' error, if error there was, was at most a technical defect in procedure; it related to the form of their appeals rather than to matters of substance and it was caused solely by the erroneous decision of the court below in *London v. O'Dougherty, supra*. Under these conditions, only the most archaic insistence upon "the formalistic rigorism of an earlier and out-moded time" (*Crump v. Hill*, 104 F. (2d) 36, 38 (C. C. A. 5th)) could serve to defeat the power

of the court below to hear the appeals in its discretion.

Even under the old Bankruptcy Act, no such rigid adherence to form was required. In considering appeals under Sections 24 (a) and 24 (b) of the Act, prior to their amendment in 1938, this Court and the lower federal courts consistently ruled that, where the scope of review is not enlarged thereby, an error in selecting the method of appeal should be deemed merely a technical defect, insufficient to defeat review. See *Holden v. Stratton*, 191 U. S. 115, 119, and cases cited; *Duryea Power Co. v. Sternbergh*, 218 U. S. 299, 301; *Taylor v. Voss*, 271 U. S. 176, 182; *Baxter v. Savings Bank of Utica*, 92 F. (2d) 404 (C. C. A. 5th); *Wilson v. Alliance Life Ins. Co.*, 102 F. (2d) 365 (C. C. A. 5th); cf. *Crump v. Hill*, *supra*; *Crescent Wharf & Warehouse Co. v. Pillsbury*, 93 F. (2d) 761 (C. C. A. 9th). This rule applies with added force since the enactment of the Chandler Act and the promulgation of the new Rules, one of the purposes of which, as we have shown, was to eliminate procedural entrapments.

In *Taylor v. Voss*, *supra*, this Court held that, when the facts are undisputed or no longer questioned, review of a "controversy" arising in a bankruptcy proceeding may be secured either by an appeal under Section 24 (a) or by a petition for revision under Section 24 (b), since, in this situation, the scope of review under the two sections

would be identical. In the course of its opinion the Court stated (271 U. S. at 182, 187):

* * * apart from the scope of the review permitted by the Act, the distinction between an appeal and a petition for revision in the mere matter of form, is immaterial. Thus, although a petition for revision cannot be treated as an appeal for the purpose of enlarging the scope of the review so as to extend to questions of fact, *Duryea Power Co. v. Sternbergh*, *supra* [218 U. S. 299], 302, where a matter which is only reviewable in law is taken up by an appeal, the Circuit Court of Appeals, if the question of law is sufficiently presented on the record, may treat the appeal as a petition for revision and dispose of it accordingly. *Bryan v. Bernheimer*, 181 U. S. 188, 193; *Holden v. Stratton*, 191 U. S. 115, 118, 119; *Duryea Power Co. v. Sternbergh*, *supra*, 301.

* * * * *

This construction of the Act is, we think, consistent with its letter; accords with its spirit and manifest purpose; and gives it a practicable effect removing in large measure the technical question of procedure which has so greatly obstructed its efficient administration and served in so many instances as a trap not intended by Congress, to unwary persons enmeshed in abstruse perplexities.

The foregoing passage, and the decisions cited therein, plainly establish the proposition that the selection of an erroneous method for invoking ap-

pellate jurisdiction does not defeat the jurisdiction of the appellate court to hear the case, in its discretion, if the difference between the method selected and that which should have been selected is merely formal and does not affect the scope of permissible review. That rule is directly applicable here since the questions before the court below would have been the same, whether the appeals were treated as taken of right or as taken in the discretion of the appellate court; as we have pointed out, in all appeals under the amended Act, except appeals from a judgment on a jury verdict, both questions of fact and of law are open for review. Consequently, there is no reason of substance why petitioners' appeals taken as of right could not have been treated as appeals in the discretion of the appellate court and disposed of as such. And had the court below been of opinion that the appeals could have been so treated, there is no doubt that the court would have allowed the appeals. See page 14, *supra*.

Shulman v. Wilson-Sheridan Hotel Company, 301 U. S. 172, is distinguishable. In that case an appeal taken as of right under the Bankruptcy Act prior to the 1938 amendments, from an order disallowing a fee for legal services, was held properly dismissed for want of jurisdiction because the appeal should have been taken in the discretion of the appellate court under Section 24 (b). See also *Meyer v. Kenmore Granville Hotel Company*, 297 U. S. 160. A holding that an appeal as of right

raising both questions of law and fact cannot be treated as a discretionary appeal raising only questions of law does not support a contention that the same result must follow where, as here, the scope of permissible review is not changed by the method of appeal selected.

III

THE PAPERS FILED WITH THE COURT BELOW DURING THE APPEAL PERIOD REGARDING CERTAIN OF THE APPEALS CONSTITUTED A SUFFICIENT BASIS FOR THE EXERCISE OF THAT COURT'S DISCRETION TO ALLOW THOSE APPEALS

RFC and the New Corporation filed with the court below, within the appeal period, motions to consolidate certain of the appeals (R. 314, 304, 257-259).²⁶ These motions were granted by the court below and the appeals were ordered heard upon the original papers in the District Court (R. 252).

It is true, as the court below pointed out in its opinion (R. 325), that in filing the motions petitioners did not intend to ask for leave to have the appeals allowed and that in granting the motions

²⁶ Notes of issue on the motions were filed in the court below, in accordance with its rules, prior to the expiration of the appeal period of the first group of appeals (R. 238, 251). The motion papers in support of the motions were filed on the argument of the motions, which likewise took place prior to the expiration of the time provided for taking all of the appeals except the appeal from the order awarding allowances to the Prudence Securities Advisory Group and its attorneys (R. 314, 304, 301).

the court below did not intend to grant such leave; at that time, neither the petitioners nor the court believed that leave was necessary. Nevertheless, in considering whether the court below had power to allow the appeals, it is significant that, by virtue of the motion papers, the court below had before it, within the appeal period, all of the relevant information which would have been contained in an application to have those appeals allowed, and that, on the basis of those papers, it exercised jurisdiction in the case by ordering the appeals consolidated and heard on the original papers.

The affidavits upon which the motions were made contained full statements of the proceedings in the lower court, the costs of the reorganization and the reasons why petitioners believed the District Court had committed error; the relief requested was not only consolidation of the appeals and their consideration on the original papers, but also "such other and further relief as may be just and proper in the premises" (R. 237, 250). We submit that where, as here, the appellate court has been apprised of all the relevant facts by papers duly filed in that court within the appeal period, all the substantial requirements for treating those appeals as taken have been satisfied.

Crescent Wharf & Warehouse Co. v. Pillsbury, 93 F. (2d) 761 (C. C. A. 9th), is clear authority in support of this position. In that case a compensation order under the Longshoremen's and Harbor

Workers' Compensation Act was affirmed by the District Court. The employer and carrier appealed by filing in the District Court a notice of appeal, an assignment of errors and an appeal bond; approval of the bond, which merely recited that the appellants "are about to take an appeal" was secured from the District Judge. In reliance upon a rule of the Circuit Court of Appeals for the Ninth Circuit, no application was made to the District Court for leave to appeal. Thereafter this Court, in *Alaska Packers Association v. Pillsbury*, 301 U. S. 174, held that the rule of the Circuit Court of Appeals was invalid and that it was necessary to obtain allowance of appeals by the District Court. The appellees in the *Crescent Wharf* case thereupon moved to dismiss the appeal on the ground that there had been no allowance thereof. The Circuit Court of Appeals denied the motion, holding that, in the absence of any statutory provision as to the form or manner in which appeals should be allowed, the approval of the appeal bond by the District Judge should be treated as, in legal effect, the equivalent of an allowance.

This reasoning requires a similar result in the present case. No statutory provision or rule of court prescribes the manner or form of applying for leave to appeal under Section 250. Consequently, timely notices of appeal having been filed and the appellate court having been advised within the appeal period of all facts relevant to determination of whether or not certain of the appeals

should be heard, there is no valid reason why those appeals should not have been considered as properly taken in the discretion of the appellate court, or why the papers, filed within the appeal period, were not a sufficient basis upon which the discretion of the court below could thereafter be exercised. Such a ruling would not prejudice any substantial rights of the respondents; a contrary ruling would defeat the substantial rights of 35,000 bondholders of the Prudence-Bonds Corporation.

IV

THE DICKINSON CASE SHOULD NOT BE APPLIED RETROACTIVELY TO THE PRESENT CASE

Even if the Court should hold, despite the contentions advanced in the foregoing pages, that the method of appeal adopted in this case would preclude review by the appellate court in the case of appeals taken after the decision in the *Dickinson* case, it by no means follows that such a result is required here.

In this case the appeals were taken and argued, briefs were filed, and the case was under submission on the merits at the time of the decision of this Court in the *Dickinson* case. The method of taking the appeals complied in all respects with the only procedure available to petitioners under the controlling decision of the court below in *London v. O'Dougherty*; indeed, at the time most of the appeals were taken, the *London* case stood without conflict as the sole guide to litigants. We submit

that, under these circumstances, the court below was not compelled to apply the *Dickinson* decision retroactively to the instant proceedings.

Only a rigid rule requiring that every decision of this Court be given an unrestrained retroactive application would justify the action of the court below. That there is no such undeviating requirement is indicated by *Chicot County Drainage District v. Bank*, 308 U. S. 371, 374, where, in considering the effect of a decision against the constitutionality of a federal statute upon proceedings previously taken under that statute, the Court stated:

The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of

absolute retroactive invalidity cannot be justified.

The same rationale should, we believe, be applied in this case. It is unrealistic to say that, because this Court held in the *Dickinson* case that Section 250 had one particular meaning, a decision by a circuit court of appeals to the contrary must be entirely disregarded. When petitioners took their appeals, Section 250, at least in the Second Circuit, did not have the meaning attributed to it in the *Dickinson* case; for all practical purposes it had the exactly opposite meaning attributed to it in the *London* case. The actual existence of the *London* decision was an operative fact upon the basis of which irretrievable action was taken by the petitioners; the overruling of the decision by this Court has, for the future, erased the rule which previously controlled in the Second Circuit, but it has not erased the consequences of that rule upon past transactions.

In these circumstances, no abstract considerations concerning the theoretical nature and effect of an overruling decision by this Court will give a satisfactory answer to the question whether the *Dickinson* decision should be given retroactive application to the present case; the answer must rather be sought, as it was sought in the *Chicot County* case, by a realistic examination of the effect of retroactivity upon the rights of the parties in the particular cause at bar, considered in the light of "prior determinations deemed to have finality

and acted upon accordingly" and of the public policy revealed by "the nature both of the statute and of its previous application" (308 U. S. 374).

So examined, the issue here does not admit of doubt. Petitioners' only transgression was due entirely to the erroneous decision of the court below; rudimentary principles of practical justice require that a transgression so caused should not be penalized by depriving petitioners of their statutory right to have their appeals heard in the discretion of the court below, particularly where the respondents are not thereby deprived of any substantial rights. Cf. *Barber Asphalt Co. v. Standard Co.*, 275 U. S. 372, 386. And precedent affords ample authority for meeting this requirement of practical justice by application of the principle of limiting the retroactivity which otherwise would attach to an overruling decision.

1. This Court has never had occasion to decide expressly that the federal courts have the power, where equity requires, to limit the retrospective effect of an overruling decision of this Court. Decisions in closely analogous situations, however, impel the conclusion that the power of the courts to overrule prior decisions carries with it as a necessary incident the power in particular cases to prevent an overruling decision from being an instrument of injustice or hardship.

Great Northern Ry. Co. v. Sunburst Co., 287 U. S. 358, is perhaps the most persuasive precedent. There the Court sustained, against a claim of denial of due process, the action of the Montana

Supreme Court in announcing that, although a previous decision was overruled with respect to transactions thereafter arising, it yet governed the case before the court. The *Sunburst* decision, of course, is not in itself complete authority for the existence of such a power in the federal courts. But it is a decision that the question is one which is to be decided for each state by the "common law as administered by her judges" (p. 365). The full judicial power of the United States is vested in the federal courts. If an incident of the judicial power of a state, in deciding a specific case, is the power to cut off the retroactive effect of an overruling decision where equity requires it, there seems no reason to doubt that such power inheres also in the federal courts.

The *Sunburst* decision was clearly foreshadowed by the decision, two years before, in *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673. There a taxpayer had brought suit in the state courts to enjoin the collection of a tax on the ground that there had been discrimination in assessment. Under a controlling decision of the state courts, no administrative remedy was available to the taxpayer at the time suit was commenced. In the *Brinkerhoff-Faris* case, however, this earlier decision was overruled by the state Supreme Court, which held that the taxpayer could, and should, have applied to the State Tax Commission for relief and that, because of its failure to do so, it was not entitled to maintain its suit in equity. By the time this decision was

rendered it was too late for the taxpayer to avail itself of the newly found administrative remedy and accordingly it was, in result, deprived of all right to be heard.

This Court reversed the judgment of the state court on the ground that the taxpayer had not been accorded due process of law. It stated (281 U. S. at 682):

Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.

This Court expressly affirmed the power of the state court to overrule its prior decision (p. 680). Consequently, the error of the state court must have lain simply in the fact that its overruling decision was retroactively applied to a suit brought in reliance upon the previously controlling decision. It is apparent, therefore, that the holding that due process had been denied to the petitioner was necessarily premised on the assumption that the state court not only had power, but in the circumstances presented was required, to give its overruling decision a purely prospective application. This recognition of the inherent power of the courts to limit the retroactivity of their overruling decisions is of persuasive force here, since the result reached

was in no way dependent upon the fact that the case came from the state courts.

Pointing to the same conclusion is the long line of municipal bond cases, typified by *Gelpcke v. Dubuque*, 1 Wall. 175.²⁷ In those cases this Court held that when municipal bonds have been issued and purchased in reliance upon state court decisions holding them valid, the federal courts will not follow a subsequent decision of the state court overruling the earlier cases and holding the bonds invalid. The *Gelpcke* rule seems not to rest upon any constitutional basis,²⁸ but, rather, to flow from the effort of the federal courts in diverse citizenship cases to control the effect of an overruling state decision; "where gross injustice would be otherwise done, they follow the earlier rather than the later decisions" as to state law. *Tidal Oil Co. v. Flanagan*, 263 U. S. 444, 452. In cases where there is a similar necessity to avoid the injustice

²⁷ See also *Thomas v. Lee County*, 3 Wall. 327; *Lee County v. Rogers*, 7 Wall. 181; *The City v. Lamson*, 9 Wall. 477; *Olcott v. The Supervisors*, 16 Wall. 678; *Township of Pine Grove v. Talcott*, 19 Wall. 666; *Douglass v. County of Pike*, 101 U. S. 677; *Taylor v. Ypsilanti*, 105 U. S. 60; *Louisiana v. Pilsbury*, 105 U. S. 278; *County of Ralls v. Douglass*, 105 U. S. 728; *Green County v. Conness*, 109 U. S. 104; *Anderson v. Santa Anna*, 116 U. S. 356; *Loeb v. Columbia Township Trustees*, 179 U. S. 472.

²⁸ It may be suggested, however, that the rule rests upon the same considerations of good faith in the relationship between the government and its citizens as underlie the constitutional prohibition against *ex post facto* laws and laws impairing the obligation of contracts.

and inequity which might follow from an overruling decision of this Court, there would seem to be at least an equal measure of judicial discretion in the federal courts to determine how the overruling decision will operate on events that preceded it.

The doctrine of the *Gelpcke* case is not limited to overruling decisions with respect to the validity of state statutes; it applies equally to the reversal of controlling judicial opinion concerning the proper construction of such statutes. Illustrative is *Douglass v. County of Pike*, 101 U. S. 677, one of the municipal bond cases, where this Court stated (p. 687):

The true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retroactive.

See also *The Ohio Life & Trust Co. v. Debolt*, 16 How. 416, 432, quoted with approval in *Gelpcke v. Dubuque*, *supra*, at 206. It will be noted, too, that the overruling decision of the state court given a prospective application in the *Sunburst* case concerned the construction rather than the validity of a state statute. See *Montana Horse Products Co. v. Great Northern Ry. Co.*, 91 Mont. 194, 7 Pac. (2d) 919; *Sunburst Oil & Refining Co. v. Great Northern Ry.*, 91 Mont. 216, 7 Pac. (2d) 927.²⁹

²⁹ Typical of other state decisions to the same effect are *State v. Haid*, 327 Mo. 567, and *Kelley v. Rhoads*, 7 Wyo. 237.

It is not necessary at this time to consider the *Gelpcke* doctrine in the light of its possible intrusion into state affairs not properly the concern of the federal courts. It is sufficient that, whatever its original defects, the doctrine of the *Gelpcke* case has had a strong influence in developing a body of law in the state courts which has permitted a practical and a just effect to be given an overruling decision. The cases are many, the reasoning conflicting and the results varied. But it appears that the *Gelpcke* doctrine, initiated by this Court to preserve the rights of holders of railroad bonds, has grown in the state courts into an equitable doctrine of fairly general application. With a striking degree of uniformity the state courts have followed the implication of the *Gelpcke* rule, and have avoided, by one expedient or another, the retroactive application of an overruling decision to the injury of one who clearly had conducted himself in reliance upon the earlier cases. And the wide acceptance of the doctrine by the state courts has been regarded with approval by a great majority of the legal commentators.³⁰

³⁰ Cardozo, *Address*, 55 Reports of N. Y. State Bar Ass'n (1932) 263, 293-297; Cardozo, *The Nature of the Judicial Process*, 146-148; Carpenter, *Court Decisions and the Common Law*, 17 Col. Law Rev. 593; Llewellyn, *The Constitution as an Institution*, 34 Col. Law Rev. 1, 37; Hanner, *A Suggested Modification of Stare Decisis*, 28 Ill. Law Rev. 277; Snyder, *Retrospective Operation of Overruling Decisions*, 35 Ill. Law

In Appendix B, *infra*, pp. 76-82, we have endeavored to summarize the state law as accurately as the difficulties of classification make practicable. Grouping together the cases in which a prospective application of the overruling decision was asked in the overruling case itself and those in which it was asked in a third case, we have found 100 cases in which the question has been raised. In 53 cases the court refused to give the new rule a retroactive application; in 41 cases the court gave the new rule retroactive effect but recognized the possibility that under other circumstances it might be held inapplicable to prior transactions; in only six cases has there been a flat refusal to recognize the power to limit the operation of an overruling decision. Measured by jurisdiction, the courts of some 21 states have recognized and applied a power to limit the retrospective operation

Rev. 121; Freeman, *The Protection Afforded Against the Retroactive Operation of an Overruling Decision*, 18 Col. Law Rev. 230; Kocourek, *Retrospective Decision and Stare Decisis*, 17 A. B. A. J. 180; Notes: *The Effect of an Overruling Decision*, 29 Harv. Law Rev. 80; *Retroactive Effect of an Overruling Decision*, 42 Yale Law J. 779; *Stare Decisis in Criminal Law*, 18 Yale Law J. 422; *Prospective and Retroactive Effect of an Overruling State Decision*, 17 Minn. Law Rev. 811; *Retroactive Operation of an Overruling Decision*, 10 N. Y. U. Q. R. 528.

Only von Moschzisker, *Stare Decisis in Courts of Last Resort*, 37 Harv. Law Rev. 409, squarely disapproves. Note, *The Effect of Overruled and Overruling Decisions*, 47 Harv. Law Rev. 1403, doubts the desirability of a widespread application.

of the overruling decision. The courts of six additional states have recognized its applicability under circumstances other than those of the case under consideration, and in only two states where the question has arisen have the courts denied the existence of the power.

No distinction has been drawn, and none is permissible in theory, between the effect to be given an overruling decision on a question of jurisdiction and the effect to be given an overruling decision on other types of questions. Indeed, "There are no cases where an adherence to the maxim of '*stare decisis*' is so absolutely necessary to the peace of society, as those which affect retroactively the jurisdiction of courts." *Marshall v. Baltimore and Ohio Railroad Co.*, 16 How. 314, 325. Several of the state court decisions cited in the Appendix relate to jurisdictional questions closely analogous to the present question. *State ex rel. May Department Stores Co. v. Haid*, 327 Mo. 567, 586; *Falconer v. Simmons*, 51 W. Va. 172, 176-179; see *Jones v. Woodstock Iron Co.*, 95 Ala. 551, 563; *Kelley v. Rhoads*, 7 Wyo. 237, 279; cf. *Harbert v. Railroad Co.*, 50 W. Va. 253, 255-256. The *Haid* case, in particular, presents a striking parallel, for there the Missouri Supreme Court, sitting *en banc*, overruled a previous decision of one of its Divisions prescribing the method of appealing in certain types of cases. The court stated that, in order not to disturb the rights of litigants who had shaped their course of action in conformity with

the overruled decision, the effect of the overruling decision was to be prospective only and was not to affect "the rights, positions, actions and procedure of the parties litigant" in pending proceedings.³¹

Many of the authorities speak in terms of control by the courts of the effect of their overruling decisions. It may be suggested, however, that the analysis might be cast into a more familiar mold. The court which refuses to apply the overruling decision to past transactions does so because, in the particular case presented to it for decision, the litigant had justifiably relied upon the earlier rule. This is not a denial of the new and correct rule, but merely a recognition that the litigant has an equity or a right analogous to an equitable defense, which serves to prevent its application to him. *See, e. g.,*

³¹ It is a matter of some significance that the Government has recognized the problem involved in giving retroactive effect to an overruling decision by the legislative or executive branches of the Government, and through legislation or administrative rulings has taken steps to permit unnecessary hardship to be avoided. See Section 209 (b) of the Securities Exchange Act of 1934, c. 404, 48 Stat. 881; Section 1108 (b) of the Revenue Act of 1926, c. 27, 44 Stat. 9; Section 608 of the Revenue Act of 1928, c. 852, 45 Stat. 791; 11 Comp. Gen. 195, 196; 16 Comp. Gen. 221, 222; 66 Treas. Dec., 260, 261, and 66 Treas. Dec., 315, 316 (customs duties). The same broad considerations of justice and equity are present, perhaps in intensified form, with respect to the overruling decisions of this Court.

State v. O'Neil, 147 Iowa 513.²² Just as the equitable lien, the constructive trust, or the equitable estoppel does not contradict the normal rule of law, but serves as a special exception in circumstances where necessary to prevent injustice, so the equity of the litigant who has justifiably relied upon the earlier and mistaken decision serves as a special exception to the application of the general rule of retroactivity.

Mr. Justice Cardozo, in his addresses on "The Nature of the Judicial Process" has explained the character of both the rule and the exception with realistic foresight (pp. 146-149):

I say, therefore, that in the vast majority of cases the retrospective effect of judge-made law is felt either to involve no hardship or only such hardship as is inevitable where no rule has been declared. I think it is significant that when the hardship is felt to be too great or to be unnecessary, retrospective operation is withheld. Take the cases where a court of final appeal has declared a statute void, and afterwards, reversing itself, declares the statute valid.

²² The Supreme Court of Alabama has said that any other result "would be a reproach to the law" (*Hardigree v. Mitchum*, 51 Ala. 151, 155), and that persons contracting are presumed to know the existing law, but "neither they nor their legal advisors are expected to know the law better than the courts." *Farrior v. New England Mortgage and Security Co.*, 92 Ala. 176.

Intervening transactions have been governed by the first decision. What shall be said of the validity of such transactions when the decision is overruled? Most courts in a spirit of realism have held that the operation of the statute has been suspended in the interval. It may be hard to square such a ruling with abstract dogmas and definitions. When so much else that a court does, is done with retroactive force, why draw the line here? The answer is, I think, that the line is drawn here, because the injustice and oppression of a refusal to draw it would be so great as to be intolerable. * * *

Where the line of division will some day be located, I will make no attempt to say. I feel assured, however, that its location, wherever it shall be, will be governed, not by metaphysical conceptions of the nature of judge-made law, nor by the fetish of some implacable tenet, such as that of the division of governmental powers, but by considerations of convenience, of utility, and of the deepest sentiments of justice.

2. Almost all of the authorities discussed above concern the effect of an overruling by the highest court of the jurisdiction of one of its own previous holdings. But the rationale of decision is fully applicable to the situation here presented, where the overruled case was decided by the Circuit Court of Appeals and the overruling case was decided by this Court. The same considerations of fair dealing and good faith are applicable, as are also the

same factors of reliance on an authoritative decision and the threatened loss of a substantial right acquired thereunder. Had the court below itself overruled the *London* case, it would plainly have had the power, under the authorities above cited, to limit the retrospective effect of its overruling decision. There is no reason in principle or precedent for a different conclusion simply because the rule was changed by this Court rather than by the court below.

As the discussion above shows, it is the change in the controlling rule, and the effect of that change upon parties litigant who justifiably relied upon the earlier rule, which is the occasion for the exercise of the court's discretionary power to limit the retroactive effect of an overruling decision. Under the certiorari practice, the controlling rule applicable in any given case may be established by a decision of a Circuit Court of Appeals as well as by a decision of this Court. Petitioner's reliance upon the *London* case in taking their appeals was just as justifiable and just as inevitable as though that case had been decided by this Court, and the effect of the overruling of that case upon the rights of petitioners was quite as great as though this Court had first interpreted Section 250 as it was interpreted in the *London* case and had then reversed itself. If, therefore, the retroactive effect of a decision of this Court overruling one of its own prior decisions may be limited where equity

requires, the same conclusion must follow in the type of situation here presented.³³

The authorities cited by respondents (Br. in Opp., pp. 10-11) to the effect that retroactivity will not be denied to a decision of a court of highest jurisdiction overruling an earlier decision by an inferior court are not in point. Cardozo, *The Nature of the Judicial Process*, pp. 147-148; *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673, 682; *Sears, Roebuck & Co. v. 9 Ave.-31 St. Corp.*, 274 N. Y. 388, 400, 401; *Evans v. Supreme Council, Royal Arcanum*, 223 N. Y. 497, 503.³⁴ The reason stated for this limitation is that a person is not normally justified in relying on a judgment of an inferior court; if he chooses to do so, "the chance of miscalculation is felt to be a fair risk of the game of life, not different in degree from the risk of any other misconception of right or duty. He knows that he has taken a chance, which caution often might have avoided." Cardozo, *op. cit.*, *supra*, at 148. Here, however, petitioners had no choice but to rely on the *London* decision which, at the time the appeals were taken, necessarily controlled the procedure for appealing to the court below. Had they filed an application for leave to appeal, as a precaution against the possible overruling of the *London* case, the application

³³ In *Alaska Packers v. Pillsbury*, 301 U. S. 174, relied on by the court below, no argument was presented to this Court that the decision should be given only a prospective application.

³⁴ But see *State v. Whitman*, 116 Fla. 196.

would have been summarily denied. Consequently, their reliance upon the *London* decision was not the taking of a chance which caution might have avoided, but was quite as inevitable as though the *London* case had been decided by this Court.

Moreover, the Circuit Courts of Appeals, in the federal judicial system, are courts of highest jurisdiction except in the comparatively few cases where this Court sees fit to require by certiorari that the cause be certified to it for determination. Certainly, the fact that this Court, by certiorari, reviews those decisions of the Circuit Courts of Appeals which are of peculiar gravity and general importance, or which conflict with decisions of other Circuit Courts of Appeals, does not alter the fact that in the vast majority of cases the decisions of the Circuit Courts of Appeals are conclusive and establish the controlling rules of law within their respective jurisdictions. No court which has such power of conclusive determination may properly be classed as an "inferior" court.

With specific reference to the *London* case, we venture the suggestion that counsel would not have been justified, in the absence of a conflict of decisions, in filing a petition for a writ of certiorari from this Court. In practical effect, then, the decision of the court below was that of a court of last resort.

There would seem to be no distinction in this respect between a decision by a Circuit Court of Appeals, such as that in the *London* case, which is

reviewable by certiorari in the discretion of this Court under Section 240 (a) of the Judicial Code, and a decision by the highest court of a state holding a statute invalid under the federal Constitution, which is reviewable by certiorari in the discretion of this Court under Section 237 (b) of the Judicial Code. Yet no one, we submit, would suggest that simply because a decision by the highest court of a State could have been reviewed by this Court in its discretion, the decision was not one by a court of highest jurisdiction, or that an overruling of that decision in a subsequent case could not be given a purely prospective operation.

Every consideration of principle, therefore, points to the conclusion that the power of the federal courts to limit the retroactive effect of an overruling decision by this Court is the same, whether the decision overruled was rendered by this Court or by one of the Circuit Courts of Appeals.

3. There remain only two relatively simple questions of technique: (1) whether the limitation upon retroactivity must be a part of the overruling decision itself or may be imposed in a subsequent action; and (2) if the latter, whether the limitation must be imposed by the court which rendered the overruling decision or may be imposed by another court before which the subsequent action is pending.

There can, we believe, be no doubt that the limitation upon retroactivity need not be imposed in the overruling decision itself. The analysis in Appen-

dix B of the 53 state cases in which the courts refused to give an overruling decision retroactive application shows that in 34 of them the limitation upon retroactivity was imposed in a case other than the overruling case. As we have seen, these cases stem to a large extent from the line of cases typified by *Gelpcke v. Dubuque*, where this Court refused to give retroactive effect to overruling decisions by the state courts, even though the overruling decisions did not undertake to limit their own retroactive application.

The reasons why the limitation on retroactivity need not be imposed in the overruling case are obvious. At the time of the rendition of the overruling decision, there is frequently no occasion to inquire as to whether the decision should or should not be made retroactive and, in most situations, there is less warrant for a blanket limitation upon retroactivity than there is for the imposition of a specific limitation in subsequent cases in which the equities may be concretely appraised. In the *Dickinson* case, for example, the Court, although in effect overruling the *London* case, held that the respondents had proceeded properly in taking their appeals and that the appellate court had therefore properly denied petitioners' motions to dismiss. In the light of this holding, no question of the retroactive effect of the decision was or could have been raised before the Court. If, as we believe we have established, the *Dickinson* case should not be given a retroactive application to the case at bar, it is in

this case, and only in this case, that the ruling to that effect can be made.

The second question of technique—whether a circuit court of appeals, or only this Court, can deny retroactive application to an overruling decision of this Court—is of no importance for purposes of decision in the present case, since the case is now before this Court. But, as a theoretical problem, we believe it clear in principle that the court below had power in its discretion to rule that the *Dickinson* case should not be retroactively applied. The issue of retroactivity, as we have seen, is simply whether the equities of the particular case require that the overruling decision be held inapplicable to a prior transaction. That issue can as appropriately be determined by a lower court as by this Court; it is an issue peculiar to each case in which retroactivity is sought to be denied, and its determination is not dependent upon the considerations which determined decision in the overruling case. And since, as we have shown, the declaration of nonretroactivity need not be made in the overruling case, there is no logical reason why it must be made by the court which decided the overruling case. A contrary ruling would mean that every time this Court overruled a prior decision, all litigation affected thereby would have to be brought before this Court in order to determine whether the overruling case should or should not be applied thereto.

Rutland R. R. Co. v. Central Vermont R. R. Co., 63 Vt. 1, appeal dismissed for want of jurisdiction, 159 U. S. 630, is direct authority in support of our position. There the Supreme Court of Vermont refused to apply an overruling decision of this Court retroactively where such retroactive application would have operated to invalidate valuable contract rights acquired under the overruled decision. Since the overruling decision concerned a question arising under the federal Constitution—the validity of a state tax under the commerce clause—the decision was as binding on the state court as the *Dickinson* decision was binding on the Circuit Court of Appeals. See also *Harris v. Jex*, 55 N. Y. 421; *Eberle v. Koplar*, 85 S. W. (2d) 919 (Mo. App.). It will be noted, too, that in *Gelpcke v. Dubuque* and similar cases the doctrine of non-retroactivity was declared by this Court, although both the overruled and overruling cases were decided by the state courts.

4. Respondents urge (Br. in Op., p. 11) that the ruling made in the *Dickinson* case might, had circumstances been different, have been made in the case at bar; that had this been done, the ruling would have had to be applied to the present appeals; and that no different result should follow simply because it was the *Dickinson* case, rather than this one, which first came before this Court. The argument, we submit, is based on the dubious assumption that, had the ruling first been made in the present case, this Court would have rejected

the argument, if one had been made, that the decision should be given a purely prospective operation. All of the contentions advanced in the preceding pages would have been of equal force in supporting a declaration by this Court that no retrospective application was to be given to its ruling; rejection of those contentions here cannot be premised upon the assumption that they would have been rejected had the present case preceded the *Dickinson* case to this Court.²⁵

²⁵ It is true that if the present case had preceded the *Dickinson* case to this Court and this Court had announced the same rule which it announced in the *Dickinson* case, but had declared that it was to apply only prospectively, the announcement of the rule would, technically, have been dictum. But no "case or controversy" question would have been presented since there would have been a contest both as to content of the correct rule and as to whether the rule, if unfavorable to the petitioners, should be applied retroactively to cover their case. Moreover, the fact, if it be a fact, that in some unique situations the "case or controversy" requirement might present a barrier to a limitation on the retrospective operation of an overruling decision, does not in any way detract from the force of the arguments in favor of nonretroactivity and should not bar their adoption in other situations where, as here, the case or controversy difficulty does not exist. The reasons for the case or controversy rule are, of course, of an entirely different nature and origin than the reasons for the rule of nonretroactivity; acceptance of the latter rule should not be denied in all cases simply because in some unusual cases the existence of the former rule might possibly preclude it or embarrass its application.

CONCLUSION

The decision of the court below should be reversed and the case should be remanded to the court below for the exercise of that court's discretion as to whether to hear the appeals.

Respectfully submitted.

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OCTOBER 1940.

APPENDIX A

The Bankruptcy Act, as amended by the Act of June 22, 1938 (c. 575, 52 Stat. 840; 11 U. S. C., Secs. 47, 48, 521, 650):

SEC. 24. JURISDICTION OF APPELLATE COURTS.—a. The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury, shall extend to matters of law only: *Provided further,* That when any order, decree, or judgment involves less than \$500, an appeal therefrom may be taken only upon allowance of the appellate court.

b. Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court

of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

SEC. 25. PRACTICE ON APPEALS.—a. Appeals under this Act to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order, or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

SEC. 121. Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

SEC. 250. Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

Section 230 of the Judicial Code (43 Stat. 940, U. S. C., Title 28, § 230):

SEC. 230. *Time for making application for appeal.* No appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly

made within three months after the entry of such judgment or decree.

Rule 73 (a) of the Federal Rules of Civil Procedure:

Rule 73. *Appeal to a Circuit Court of Appeals.*

(a) *How Taken.* When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

APPENDIX B

The cases which we have found in the state courts on the question of the retroactive application of an overruling decision may roughly be classified as follows:

I

CASES REFUSING TO GIVE RETROACTIVE APPLICATION TO THE OVERRULING CASE

A. Contract rights

1. Question Raised in Third Case: *Hardigree v. Mitchum*, 51 Ala. 151, 155; *Farrior v. New England Mortgage and Security Co.*, 92 Ala. 176, 181; *Harmon v. Auditor of Public Accounts*, 123 Ill. 122, 135; *Willoughby v. Holderness*, 62 N. H. 227, 228; *Harris v. Jex*, 55 N. Y. 421, 424; *Bradley & Currier Co. v. Lally*, 10 Misc. 366, 367; *State ex rel. Herman v. Railway Co.*, 11 Ohio C. C. (N. S.) 263, 269; *Hood v. Pennsylvania Society*, 221 Pa. 474, 479; *Geddes v. Brown*, 5 Phila. 180, 188; *Rutland Railroad Co. v. Central Vermont Railroad Co.*, 63 Vt. 1, 23-25.

2. Question Raised in Overruling Case: *Eagle v. City of Corbin*, 275 Ky. 808; *Payne v. City of Covington*, 276 Ky. 380; *World Fire and Marine Ins. Co. v. Tapp*, 279 Ky. 423; *Thomas v. State*, 76 Ohio St. 341, 360-361.

B. Property rights

1. Question Raised in Third Case: *Ashford v. Prewitt*, 102 Ala. 264, 273; *Haskett v. Maxey*, 134 Ind. 182; *Stephenson v. Boody*, 139 Ind. 60, 65-67; *Ruf v. Mueller*, 49 Ind. App. 7; *Lyons v. Veith*, 170 La. 915, 919; *Pittsburgh Iron Co. v. L. S. Iron Co.*, 118 Mich. 109, 127, writ of error dismissed, 178 U. S. 270; *St. Helen Shooting Club v. Carter*, 248 Mich. 376, 379; *Bank of Philadelphia v. Posey*, 130 Miss. 825, 826; *Hill v. Brown*, 144 N. C. 117, 119; *Threadgill v. Wadesboro*, 170 N. C. 641, 644; *Fowle v. O'Ham*, 176 N. C. 12, 13; *Bryant Manufacturing Co. v. Hester et al.*, 177 N. C. 609, 611; *Wilkinson v. Wallace*, 192 N. C. 156, 158; *Bagby v. Martin*, 118 Okla. 244, 247-248; *Herndon v. Moore*, 18 S. C. 339, 354-357.

2. Question Raised in Overruling Case: *Klocke v. Klocke*, 276 Mo. 572; *Barker v. St. Louis County*, 340 Mo. 986; *Jones v. Williams*, 155 N. C. 179, 189-190; *Harness v. Myers*, 143 Okla. 147, 151; *Mengea v. Dentler*, 33 Pa. 495.

C. Status

2. Question Raised in Overruling Case: *Bingham v. Miller*, 17 Ohio 445, 448.

D. Tort

2. Question Raised in Overruling Case: *Montana Horse Products Co. v. Great Northern R. Co.*, 91 Mont. 194, 210-212, 215; *Sunburst O. & R. Co. v. Great Northern R. Co.*, 91 Mont. 216, affirmed, 287 U. S. 358; *Continental Supply Co. v. Abell*, 95 Mont. 148, 168-171.

E. Criminal law

1. Question Raised in Third Case: *People v. Ryan*, 152 Cal. 364, 369; *State v. Whitman*, 116 Fla. 196; *State v. O'Neil*, 147 Iowa 513, 517-521; *State v. Longino*, 109 Miss. 125, 133-135; *Dauchey Co., Inc., v. Farney*, 105 Misc. 470, 475-481.

2. Question Raised in Overruling Case: *People v. Maughs*, 149 Cal. 253, 263; *Odom v. State*, 132 Miss. 3, 6; *State v. Bell*, 136 N. C. 674, 677; cf. *State v. Fulton*, 149 N. C. 485, 492-493, 497, 507.

F. Taxation

1. Question Raised in Third Case: *Shoemaker v. City of Cincinnati*, 68 Ohio St. 603, 613; *Price v. City of Toledo*, 4 Ohio C. C. (N. S.) 57, 67.

G. Procedure

1. Question Raised in Third Case: *Oliver v. Lynn Meat Co.*, 230 Mo. App. 1021; *Eberle v. Koplar*, 85 S. W. (2d) 919 (Mo. App.).

2. Question Raised in Overruling Case: *Jones v. Woodstock Iron Co.*, 95 Ala. 551, 563; *State ex rel. May Department Stores Co. v. Haid*, 327 Mo. 567, 586; *Kelley v. Rhoads*, 7 Wyo. 237, 279.

II

CASES GIVING RETROACTIVE APPLICATION TO OVERRULING CASE BUT RECOGNIZING POWER TO AVOID SUCH AN APPLICATION UNDER OTHER CIRCUMSTANCES

A. Contract rights

1. Question Raised in Third Case: *Alferitz v. Borgwardt*, 126 Cal. 201, 208; *Sudbury v. Monroe*, 157 Ind. 446, 456-457; *Gross v. Whitley*, 158 Ind.

531, 535-536; *Herron v. Whitely Castings Co.*, 47 Ind. App. 335-340; *McClure v. Owen*, 26 Iowa, 243, 250-253, writ of error dismissed, 10 Wall. 511; *Swanson v. City of Ottumwa*, 131 Iowa, 540, 549-550; *Hoven v. McCarthy Brothers Co.*, 163 Minn. 339, 343; *Mountain Grove Bank v. Douglas County*, 146 Mo. 42, 54-55; *City of Sedalia v. Gold*, 91 Mo. App. 32, 39-40; *Keeler v. Templeton*, 164 N. Y. Misc. 113; *Ray v. Natural Gas Co.*, 138 Pa. 576, 590-591; *Nickolk v. Racine Cloak & Suit Co.*, 194 Wis. 298, 303-304.

2. Question Raised in Overruling Case: *State ex rel. Nuveen v. Greer*, 88 Fla. 249, 259-260; *Oliver Co. v. Louisville Realty Co.*, 156 Ky. 628, 644-645; *Mason v. Cotton Co.*, 148 N. C. 492, 510-511.

B. Property rights.

1. Question Raised in Third Case: *Allen v. Allen*, 95 Cal. 184, 199; *Pierce v. Pierce*, 46 Ind. 86, 96; *Hibbits v. Jack*, 97 Ind. 570, 578; *Center School Township v. State ex rel. Board*, 150 Ind. 168; *Thompson v. Henry*, 153 Ind. 56, 59-60; *Levy v. Hitsche*, 40 La. Ann. 500, 508; *Donohue v. Russell*, 264 Mich. 217, 219-220; *Bradshaw v. Duluth Imperial Mill Co.*, 52 Minn. 59, 66; *Coats v. Riley*, 154 Okla. 291, 296-297.

2. Question Raised in Overruling Case: *Pearson v. Orcutt*, 107 Kan. 305.

E. Criminal law

1. Question Raised in Third Case: *State v. Strigles*, 202 Iowa 1318, 1320.

2. Question Raised in Overruling Case: *Crigler v. Shepler*, 79 Kan. 834, 836-842.

F. *Taxation*

1. Question Raised in Third Case: *O'Malley v. Sims*, 51 Ariz. 155; *People ex rel. Rice v. Graves*, 242 App. Div. 128, aff'd 270 N. Y. 498, certiorari denied 298 U. S. 683; *Theological Seminary v. People ex rel. Raymond*, 189 Ill. 439, 455-456; *Yazoo, etc. Railroad Co. v. Adams*, 81 Miss. 90, 115-120; *Lewis v. Symmes*, 61 Ohio St. 471, 486; *City of Sidney v. Cummins*, 93 Ohio St. 328, 334-335; *Laabs v. Wisconsin Tax Commission*, 218 Wis. 414.

G. *Procedure*

1. Question Raised in Third Case: *Great Atlantic & Pacific Tea Co. v. Scanlon*, 266 Ky. 785; *Norton v. Crescent City Ice Mfg. Co.*, 178 La. 135, 141-146; *Koebel v. Tieman Coal Co.*, 337 Mo. 561; *Harbert v. Railroad Co.*, 50 W. Va. 253, 255-256; *Falconer v. Simmons*, 51 W. Va. 172, 176-179; cf. *Keyser's Appeal*, 124 Pa. 80, 87.

2. Question Raised in Overruling Case: *Arkansas State Highway Commission v. Nelson Bros.*, 191 Ark 629.

III

UNQUALIFIED REFUSAL TO DENY RETROACTIVE APPLICATION TO OVERRULING CASE

A. *Contract rights*

1. Question Raised in Third Case: *Duke v. Olson*, 240 Ill. App. 198; *Stockton v. Dundee Manufacturing Co.*, 22 N. J. Eq. 56; *Ross v. Freeholders of Hudson*, 90 N. J. L. 522, 527-528; *Lawrence-Cedarhurst Bank v. Ruth*, 162 N. Y. Misc. 82; *Storrie v. Cortes*, 90 Tex. 283, 286-292.

G. Procedure

1. Question Raised in Third Case: *Finley v. United Railways*, 238 Mo. 6, 19.

IV

MISCELLANEOUS CASES BEARING ON THE POWER TO AVOID RETROACTIVE APPLICATION OF AN OVERRULING DECISION

A. In several cases the court has refused to re-examine earlier rulings on the ground that, whatever might be its opinion now, the rights of the party who relied upon the earlier decisions would not retroactively be destroyed by an overruling decision. *County Commissioners v. King*, 13 Fla. 451, 462-465; *Straus v. City of New Orleans*, 166 La. 1035, 1046; *Hill v. Railroad*, 143 N. C. 539, 573-581; *Bond Debt Cases*, 12 S. C. 200, 281-283; *Richardson v. Marshall County*, 100 Tenn. 346, 351-352; *State v. Mayor of Bristol*, 109 Tenn. 315, 323.

B. The numerous cases refusing to reopen executed transactions when the decisions under which they were made have been overruled may have been influenced by the doctrine under consideration. See, for example, *Troy v. Bland*, 58 Ala. 197; *Kenyon v. Welty*, 20 Cal. 637; *Commonwealth v. Fidelity & Columbia T. Co.*, 185 Ky. 300; *Doll v. Earle*, 59 N. Y. 638; *Novara v. County of Wyoming*, 144 Misc. 920; *Metzger v. Greiner*, 9 Ohio C. C. (N. S.) 364.

C. Two cases are interesting examples of the difficulties into which the courts can sometimes be plunged and from which the power to avoid retroactive application of the overruling decision would,

had it been considered, offer an escape. *Kneeland v. City of Milwaukee*, 15 Wis. 454, 691; *People v. Tompkins*, 186 N. Y. 413.

D. For a case in which a former ruling was held controlling while at the same time the court served notice that it would not control future cases, see *Southern Grocer Co. v. Adams*, 112 La. 60. The court followed this dictum and overruled the earlier case in *Maxwell-Yerger Co. v. Rogan*, 125 La. 1, 15.

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MAY 28 1940

CHARLES HENRY CROPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM 1939.

No. [REDACTED] 69

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE BONDS
CORPORATION, PRESIDENT AND DIRECTORS OF THE MAN-
HATTAN COMPANY, and THE MARINE MIDLAND TRUST
COMPANY OF NEW YORK,

Petitioners,

vs.

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT
PRUDENCE BONDHOLDERS COMMITTEE, *et al.*

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

**BRIEF IN OPPOSITION SUBMITTED ON BEHALF OF
RESPONDENTS PRUDENCE SECURITIES ADVIS-
ORY GROUP, PERCIVAL E. JACKSON AND CLIN-
TON T. ROE, ITS COUNSEL, GEORGE M. JAFFIN
AND LEONARD KLABER AND SAMUEL SILBIGER.**

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GEORGE M. JAFFIN AND
LEONARD KLABER,
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Pro se.

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(NOTE: The above index of citations omits the cases listed in Appendix B unless cited in the body of the brief.

IN THE
Supreme Court of the United States

OCTOBER TERM 1939.

No. 992.

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE BONDS
CORPORATION, PRESIDENT AND DIRECTORS OF THE MAN-
HATTAN COMPANY, and THE MARINE MIDLAND TRUST
COMPANY OF NEW YORK, *a*

Petitioners,

vs.

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT
PRUDENCE BONDHOLDERS COMMITTEE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

**BRIEF IN OPPOSITION SUBMITTED ON BEHALF OF
RESPONDENTS PRUDENCE SECURITIES ADVIS-
ORY GROUP, PERCIVAL E. JACKSON AND CLIN-
TON T. ROE, ITS COUNSEL, GEORGE M. JAFFIN
AND LEONARD KLABER AND SAMUEL SILBIGER.**

Opinions Below.

The opinions of the Circuit Court of Appeals for the
Second Circuit (R. 319-328)¹ are not yet officially re-
ported.

Jurisdiction.

The decree of the Circuit Court of Appeals dismissing
petitioners' appeals was entered April 23, 1940 (R. 330-
337). The petition for writ of certiorari was filed May

¹ All record references herein are to pages of the proposed
record.

8th, 1940. The jurisdiction of this Court is invoked under Section 24 (c) of the Bankruptcy Act and under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Petitioners filed with the District Court notices of appeal from orders of the District Court making allowances of compensation and reimbursement. Other appellants below filed with the District Court notices of appeal from orders refusing to make allowances of compensation or reimbursement. In no case was application made to the Circuit Court of Appeals for leave to appeal, and in no case was such leave obtained from the appellate court.

The question presented is whether the Circuit Court properly dismissed the appeals by reason of the failure of the appellants to apply for and obtain leave to appeal from said Court within the statutory period. The petitioners divide this question into three parts.²

In the argument hereafter, we discuss the subdivisions of the question as presented by the petitioners.³

Statute Involved.

The pertinent statute involved is the Bankruptcy Act, as amended June 22nd, 1938, Sections 25 and 250 which are set forth in Appendix A.

² Petition for Writ—pp. 2, 3.

³ Petitioners have indicated that if a writ were granted they would argue the additional question whether the order consolidating the appeals gave the Circuit Court of Appeals jurisdiction over certain of them. The fact is that at no time was an application for leave to appeal made to the Circuit Court, and that Court has refused to consider the application for consolidation as such an application (R. 325).

Statement.

This proceeding has been pending since 1934 and involves eighteen separate plans and one general plan of reorganization for eighteen series of outstanding bonds aggregating over \$50,000,000, each series being secured by a separate indenture and having a separate trustee.⁴

After the confirmation of the plans of reorganization, the Special Master reported to the District Court on allowances to various parties. These reports were confirmed by the District Judge with modifications. The allowances fell in two categories, first, for reorganization expenses, and second, for administration expenses, the latter including both the administrative cost of "servicing" mortgages and real property⁵ and the contractual obligations of the debtor to the various corporate trustees and their counsel under the eighteen indentures securing the eighteen series of bonds.⁶

⁴ See *In re Prudence Bonds Corporation—Appeal of Chemical Bank & Trust Co.* (C. C. A. 2), 79 F. (2d) 205, cert. den. 296 U. S. 652.

⁵ This was the business of the debtor (see *In re The Prudence Company Inc.* (C. C. A. 2), 82 F. (2d) 755).

⁶ "It must also be clearly understood, as is plainly set forth by the Special Master in his reports, that the allowances to the corporate trustees and their attorneys are mainly based on entirely different ground from that on which is based these allowances to attorneys and committees. The latter are for services strictly within the reorganization expense. The former relate mainly to the ordinary contractual relations of servicing agents, etc., which were a part of a going concern.

"In my opinion the total allowances now under consideration recommended by the Special Master and by this court for strictly reorganization expenses in a matter of this magnitude and complexity and with the numerous parties in interest and the many incidental proceedings and appeals, is exceedingly reasonable." (Opinion of Hon. Robert A. Inch, Judge of the United States District Court, Eastern District of New York, dated March 15, 1939, *In re Prudence Bonds Corporation*, E. D. N. Y. Index No. 26545, unreported.)

Petitioners herein and others sought to take appeal to the Circuit Court of Appeals for the Second Circuit (R. 92-161, 189, 207-222) from the orders of the District Court making, denying or deferring payment of allowances herein.

Of the various appellants, ten sought allowances which the District Judge had denied *in toto* (R. 142, 145, 147, 153, 158), sixteen sought increased allowances (R. 146, 159-161, 209-222), while two appealed from all allowances made, claiming, *inter alia* and principally, that the aggregate was excessive.⁷ These latter two appellants, Prudence Bonds Corporation (New Corporation) and Reconstruction Finance Corporation are two of the four petitioners herein; the other two petitioners, President and directors of the Manhattan Company and The Marine Midland Trust Company of New York are appellants who did not appeal from the orders making allowances to respondents but sought solely to increase their own allowances (R. 216, 221).

In attempting to appeal to the Circuit Court of Appeals, none of the appellants sought or obtained leave of that Court (R. 320).

Thereafter, on the basis of the opinion of the Seventh Circuit Court of Appeals (*In re Albert Dickinson Co.*, 104 F. (2d) 771), respondents, Prudence Securities Advisory Group, and its attorneys, moved to dismiss the appeals

⁷ These appeals were taken in two groups; the first group was consolidated by order of the Circuit Court of Appeals dated March 22, 1939 (R. 252), which was made after the time to appeal from the order making allowances to Prudence Securities Advisory Group and its attorneys had expired, and which order provided, *inter alia*, that it was made "without prejudice to a motion to dismiss said appeals" (R. 252). The second group was independently consolidated (but not with those of the first group) by order dated January 8, 1940, on a petition verified January 2, 1940 (R. 280) more than forty days after the entry of the order appealed from (R. 293).

of petitioners, Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation, these being the only appeals which had been directed to the order granting allowances to said respondents (R. 276-279). The Circuit Court of Appeals for the Second Circuit, adhering to its decision in *London v. O'Dougherty*, 102 F. (2d) 524, denied the motion by order made December 7, 1939 (R. 279).

Respondents, Prudence Securities Advisory Group, and its attorneys, then moved for an extension of their time to petition this Court for a writ of certiorari in order that the conflict between the decision of the Second Circuit in *London v. O'Dougherty* and that of the Seventh Circuit in *Re Albert Dickinson* might be settled. On the hearing of that motion, the petitioners, Prudence-Bonds Corporation (New Corporation) and Reconstruction Finance Corporation submitted a brief on the main question then pending before this Court in *Dickinson Industrial Site, Inc. v. Cowan*.

Thereafter, this Court resolved the conflict in favor of the contention of these respondents by affirming the decision of the Seventh Circuit (*Dickinson Industrial Site, Inc. v. Cowan*, 60 S. Ct. 595, 84 L. Ed. 549).⁸

As a result, it became unnecessary for respondent, Prudence Securities Advisory Group, and its attorneys, to seek certiorari in the instant case. Instead, they moved for reargument of their motion to dismiss the appeals (R. 287-294). The respondents, Independent Prudence Bondholders Protective Committee, and its counsel, likewise moved to dismiss the appeals directed to their allowances (R. 294-300). The Circuit Court, upon the opinion of this Court affirming the determination of the Seventh Circuit in the *Dickinson* case and overruling

⁸ Hereinafter referred to as the "Dickinson case".

that of the Second Circuit in *London v. O'Dougherty*, granted these motions and dismissed all appeals (R. 326).⁹

Argument.

On the foregoing state of facts, respondents submit that the decision of this Court in *Dickinson Industrial Site, Inc. v. Cowan*, *supra*, resolved the conflict heretofore existing, stated in unmistakable language the rule applicable to the instant case, and thereby made the issuance of a writ of certiorari herein wholly unnecessary.

The three questions urged by the petitioners furnish no basis for the issuance of a writ.

I.

Petitioners' First Question: Was the failure to apply to the Court below for leave within the appeal period a jurisdictional defect requiring the dismissal of the appeals?

The answer to this question can only be in the affirmative.

This Court has just held in the *Dickinson* case that "appeals from all orders making or refusing to make allowances of compensation or reimbursement under Ch. X of the Chandler Act may be had only at the discretion of the Circuit Court of Appeals" (p. 551).

It has repeatedly been held by this Court that where an appeal may be taken only by leave of the appellate court, failure to apply for such leave within the appeal

⁹ The Court of its own motion heard argument as to and dismissed all of the other appeals (R. 326).

period is a jurisdictional defect requiring dismissal of the appeal. *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172; *Meyer v. Kenmore-Granville Hotel Co.*, 297 U. S. 160; *McCrone v. United States*, 307 U. S. 61; *Alaska Packers Asso. v. Pillsbury*, 301 U. S. 174.

There is no conflict in the application of this rule. Every Circuit Court of Appeals has adopted it.¹⁰

Petitioners point to two cases in the Fifth Circuit (*Baxter v. Savings Bank of Utica*, 92 F. (2d) 404 and *Wilson v. Alliance Life Ins. Co.*, 102 F. (2d) 365). But as Judge Swan pointed out in his opinion in the instant case, not only do these cases contain no consideration of the problem, but they do not refer to the Fifth Circuit's own adherence to the general rule in *Shoreland Co. v. Conklin*, 30 F. (2d) 489 (R. 323), or to the decisions of every other Circuit Court of Appeals. Furthermore, these two cases are squarely contrary to the decisions of this Court in the cases of *Shulman v. Wilson-Sheridan Hotel Co.* and *McCrone v. United States*, *supra*, where this Court passed upon the matter as to which there is now a claim of conflict. The uniformity of these decisions renders any claim of conflict based on the Fifth Circuit decisions illusory, and renders wholly unnecessary the issuance of a writ in a case decided in conformity therewith.

¹⁰ The cases from each Circuit Court of Appeals are cited in Appendix B. Four of them were cited by this Court with approval in *Meyer v. Kenmore-Granville Hotel Co.*, *supra*, and one of them cited with approval in *Shulman v. Wilson-Sheridan Co.*, *supra*; and in seven of them, certiorari to review the decision of dismissal was denied.

II.

Petitioners' Second Question: Was the Court below compelled, under Section 250 of the Bankruptcy Act, to dismiss the appeals because application for leave to appeal was not made within the appeal period?

Petitioners' second question is not distinguishable from their first. Apparently petitioners are urging that though an application for leave to appeal is jurisdictional, failure to make such an application within the statutory period is not jurisdictional.

The time within which appeals may be taken to and allowed by the Circuit Court is fixed by statute.¹¹ Since the statute fixes the period, it is settled that the time may not be extended either by the court or by consent of the parties. *Old Nick Williams Co. v. United States*, 215 U. S. 541; *Vaughan v. American Insurance Co. of Newark, N. J.* (C. C. A. 5), 15 F. (2d) 526, 527..

Indeed, every case we have cited under our discussion of the first question is determinative of petitioners' second one. For, in holding that it must dismiss an appeal for lack of an application for leave, each Court necessarily decided that it was too late to apply for and obtain such leave after the statutory period for appeal had expired.

Petitioners urge that a different result should now obtain because of Rule 73 (a) of the Rules of Civil Procedure.

This contention has been answered by the *Dickinson* case, *supra*.¹² The very ground urged for dismissal in

¹¹ Sections 250 and 25 of the Bankruptcy Act, as amended.

¹² On this score see also:

In re Albert Dickinson Co., 104 F. (2d) 771, 774;

In re Donahoe's Inc. (C. C. A. 3), 110 F. (2d) 813;

Coursey v. International Harvester Co. (C. C. A. 10), 109 F. (2d) 774.

the *Dickinson* case was the failure to comply with the mandate of Rule 73 (a) that a notice of appeal be filed in the District Court "when an appeal is permitted by law". Had the rule applied, the Court would have dismissed that appeal.

Petitioners also rely on *Taylor v. Voss*, 271 U. S. 176. The same case was relied upon by the appellants in *Shulman v. Wilson-Sheridan Hotel Co.*, *supra*, and rejected there, for this Court affirmed the order of the Circuit Court dismissing the appeal for lack of jurisdiction because leave to appeal had not been obtained.

The difference between the *Taylor* case, on the one hand, and the *Dickinson* and instant cases, on the other, is inescapable.

The *Taylor* case held that, under the then prevailing statute, a petition to revise *was a concurrent remedy* with an appeal where a review as to matters of law was all that was sought from a determination in a controversy in a bankruptcy proceeding.

The *Dickinson* case holds that an appeal under Section 250 *is the only method of review* in an appeal from allowances.

Moreover, in the *Taylor* case, both methods of review were taken as of right.¹³ To apply the holding of the *Taylor* case here would mean that an appeal as of right under Section 24 (a) is a concurrent remedy to review allowances with an appeal only by leave of the appellate court under Section 250. This is exactly contrary to what this Court held in the *Dickinson* case, and by this argument the requirement of the statute that leave must be obtained from the appellate court in its discretion in an appeal from allowances could be avoided by taking the appeal under Section 24 (a).

¹³ See *In re Perlman* (C. C. A. 7), 68 F. (2d) 729, 730.

III.

Petitioners' Third Question: Was the Court below compelled to give retroactive effect to the subsequent decision of this Court and to dismiss the appeals for want of jurisdiction?

It is difficult to see how the answer to this question can admit of doubt. Petitioners argue that since they relied upon *London v. O'Dougherty*, the respondents are bound by that decision notwithstanding the holding by this Court that the *London* case was erroneous.

Such a contention violates elementary principles of appellate jurisdiction.

Cases relied upon by petitioners where the Court of last resort reverses itself have no application,¹⁴ where as here, this Court has not reversed itself but in construing for the first time the applicable statute has resolved a conflict between inferior courts by stating the true rule.

"We will not help out the man who has trusted in the judgment of some inferior court. In his case, the chance of miscalculation is felt to be a fair risk of the game of life, not different in degree from the risk of any other misconception of right or duty. He knows that he has taken a chance, which caution often might have avoided. The judgment of a court of final appeal is felt to stand upon a different basis."

Cardozo, *The Nature of the Judicial Process*, pp. 147-148.

"Had there been no previous construction of the statute by the highest court, the plaintiff would, of course, have

¹⁴ *Chicot County District v. Bank*, 308 U. S. 371, is also quoted for this retroactive exception, though it involved solely an attempt to attack collaterally a prior judgment on jurisdictional grounds.

had to assume the risk that the ultimate interpretation by the highest court might differ from its own." *Brinkerhoff-Faris Trust & Savings Co., v. Hill*, 281 U. S. 673, 682.

To the same effect see *Sears Roebuck & Co. v. 9 Ave.-31st St. Corp.*, 274 N. Y. 388, 400, 401; *Evans v. Supreme Council, Royal Arcanum*, 223 N. Y. 497, 503.

It is to be remembered that respondents, Prudence Securities Advisory Group and its counsel, obtained extension of their time to apply for a writ when their prior motion to dismiss was denied below. The holding by this Court in the *Dickinson* case might have first been made in this case had not that appeal been pressed. If petitioners are correct and respondents herein are not entitled to the true rule under the present circumstances, then it must follow logically that respondents could not have benefitted if the *Dickinson* ruling had been made on their appeal, for the petitioners' reliance on the *London v. O'Dougherty* case would have been just as great had this Court written the correct rule on the appeal of these respondents.

But such a conclusion would deprive this Court of a large part of its appellate jurisdiction and would constitute an unwarranted extension of the principle of *res judicata*. An appeal would then be fruitless so long as there was a prior erroneous decision below, for this Court could only then state the rule for the future while denying appellants' present relief. Petitioners seek to bind respondents by the erroneous decision of *London v. O'Dougherty* to which respondents were not parties and upon which they could not be heard. This petitioners cannot do. *Sears Roebuck & Co. v. 9 Ave.-31 St. Corp.*, *supra*.

The Circuit Courts are required to apply the holding of this Court in the *Dickinson* case to all pending proceedings. This they have uniformly done. (*In re Donahoe's* (C. C. A. 3), 110 F. (2d) 813; and *Milbank, Tweed & Hope, et al. v. McCue, et al.* (C. C. A. 4) (No. 4585, unreported.) As to this elementary principle, there is and can be no conflict.

CONCLUSION.

We submit that there is no reason for granting a writ of certiorari in this case. There is nothing novel or important in the decision of the Court below, which correctly applies principles well established by this Court.

Respectfully submitted,

PERCIVAL E. JACKSON,
Counsel for Prudence Securities Advisory
Group, Clinton T. Roe, *Pro se.*

GEORGE M. JAFFIN AND
LEONARD KLABER,
Pro se.

SAMUEL SILBIGER,
Pro se.

Appendix A.

The Bankruptcy Act, as amended by the Act of June 22, 1938 (c. 575, 52 Stat. 840; 11 U. S. C. Supp. V, Secs. 48 and 650):

Sec. 25. Practice on Appeals.— a. Appeals under this Act to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which service shall be filed within five days after service or, if such notice be not served and filed, then forty days from such entry.

.

Sec. 250. Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the Circuit Court of Appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

Appendix B.

LIST OF BANKRUPTCY CASES OF THE VARIOUS CIRCUIT
COURTS OF APPEAL HOLDING FAILURE TO APPLY FOR
LEAVE WITHIN STATUTORY PERIOD IS JURISDICTIONAL
AND REQUIRES DISMISSAL OF THE APPEALS.

First Circuit.

Ahlstrom v. Ferguson, 29 F. (2) 515;
Yglesias & Co. v. Eneglotaria Medicine Co. Inc., 73 F.
(2) 485, Pet. for reh. den. 74 F. (2) 635, cert. den.
295 U. S. 739;
Gorbea v. Soto Gras, 82 F. (2) 634.

Second Circuit.

In re Torgovnick, 49 F. (2) 211;
In re Federal Photo Engraving Corp., 54 F. (2) 628;
In re Weinstock, 56 F. (2) 829;
In re Books, 72 F. (2) 363;
In re Roe, 87 F. (2) 693;
In re Combs, 88 F. (2) 417, cert. den. 302 U. S. 683;
In re C. M. Piece Dyeing Co., 89 F. (2) 37;
In re Postal Telegraph & Cable Corp., 89 F. (2) 183;
In re Connecticut Co., 95 F. (2) 311, cert. den. 304 U. S.
571.

Third Circuit.

Jurgenson v. National Oil & Supply Co., 63 F. (2) 727;
Stein v. Gaetje, 96 F. (2) 877;
Noble v. Hopewell Nat. Bank, 98 F. (2) 623.

Fourth Circuit.

Wingert v. Smead, 70 F. (2) 351, cert. den. 293 U. S.
567.

Fifth Circuit.

Shoreland Co. v. Conklin, 30 F. (2) 489.

Sixth Circuit.

Deeley v. Cincinnati Art Pub. Co., 23 F. (2) 920;

Humber v. Bankers' Trust Co., 70 F. (2) 265;

Capital Endowment Co. v. Kroeger, 86 F. (2) 976.

Seventh Circuit.

In re Perlman, 68 F. (2) 729;

In re Johanson, 77 F. (2) 204;

In re Wilson-Sheridan Hotel Co., 86 F. (2) 898, aff'd 301 U. S. 172;

In re Kenmore Granville Hotel Co., 90 F. (2) 151;

In re Glen Sheridan Realty Trust, 90 F. (2) 466, cert. den. 302 U. S. 727;

In re Grocery Center, Inc., 91 F. (2) 176, cert. den. 302 U. S. 727;

In re Fearheiley, 97 F. (2) 231.

Eighth Circuit.

Broders v. Lage, 25 F. (2) 288;

Stanley's Incorporated Store No. 3 v. Earl, 25 F. (2) 458, cert. den. 278 U. S. 637;

Raich v. Olson, 25 F. (2) 865;

American State Bank v. Ulrich, 28 F. (2) 753;

Gate City Clay Co. v. Dickey, 39 F. (2) 581;

Schnurr v. Miller, 49 F. (2) 109;

Hunter v. Commerce Trust Co., 55 F. (2) 1;

In re Schulte-United, Inc., 59 F. (2) 553;

Hudspeth v. Woods, 70 F. (2) 504;

Vitagraph, Inc. v. St. Louis Properties Corp., 77 F. (2) 590;

Credit Alliance Corp. v. Atlantic, Pacific & Gulf R. Co.,
 77 F. (2) 595;
St. Louis Can Co. v. General American Life Ins. Co.,
 77 F. (2) 598;
Hey v. Ward, 84 F. (2) 193;
Griffith v. Equitable Life Assurance Society, 91 F. (2) 9;
Schoppe v. First Trust Co., 101 F. (2) 417.

Ninth Circuit.

Standard Sanitary Mfg. Co. v. Momsen-Dunnegan-Ryan,
 51 F. (2) 684;
In re Miller & Harbaugh, 56 F. (2) 141;
In re Interstate Oil Corp., 63 F. (2) 674;
Wilkerson v. Cooch, 78 F. (2) 311;
Robinson v. Edler, 78 F. (2) 817;
In re Harris, 78 F. (2) 849;
Raentsch v. American Co., 82 F. (2) 770;
Bank of America Nat. Trust & Savings Assn. v. Cuccia,
 90 F. (2) 100;
Harrison Securities Co. v. Spinks Realty Co., 92 F. (2)
 904;
In re National Finance & Mortgage Corp., 96 F. (2) 74.

Tenth Circuit.

In re Merchants' Oil Co., 36 F. (2) 655;
Quarles v. Dennison, 45 F. (2) 585;
Mason v. Hardy-Griffin-Sheff, 45 F. (2) 587;
Marcy v. Miller, 95 F. (2) 611.

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MAY 28 1940

CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

RECONSTRUCTION FINANCE CORPORATION,
PRUDENCE-BONDS CORPORATION, PRESI-
DENT AND DIRECTORS OF THE MANHAT-
TAN COMPANY, and THE MARINE MIDLAND
TRUST COMPANY OF NEW YORK,

Petitioners,

AGAINST

PRUDENCE SECURITIES ADVISORY GROUP,
INDEPENDENT PRUDENCE BONDHOLDERS
COMMITTEE, *et al.*,

Respondents.

***Brief for Respondents Rogers & Whitaker,
Latson & Tamblyn, and Grosvenor M. Cal-
kins, in Opposition to Petition for Writ
of Certiorari.***

ROGERS & WHITAKER,
LATSON & TAMBLYN,
GROSVENOR M. CALKINS,

Pro Se.

ALMET R. LATSON, JR.,
Of Counsel.

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Opinions Below.

The opinions of the Circuit Court of Appeals for the Second Circuit (fols. 955, *et seq.*) are not yet reported.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-BONDS
CORPORATION, PRESIDENT AND DIRECTORS OF THE MAN-
HATTAN COMPANY, and THE MARINE MIDLAND TRUST
COMPANY OF NEW YORK,

Petitioners,

AGAINST

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT
PRUDENCE BONDHOLDERS COMMITTEE, *et al.*,

Respondents.

**Brief for Respondents Rogers & Whitaker, Lat-
son & Tambllyn, and Gresvener M. Cal-
kins, in Opposition to Petition
for Writ of Certiorari.**

The Circuit Court of Appeals dismissed, *of its own motion*, the appeals to that Court from the orders granting allowances to these respondents, and the members of the Committees represented by them (fol. 1010).

The petition is predicated upon four specifications of error. At the outset, one fundamental fact must be emphasized: At no time, either before or after the decision of this Court in *Dickinson Industrial Site, Inc. v. Cowan*, No. 386, October, 1939, Term decided March 11, 1940 has any paper, which could possibly serve as a request for leave to appeal, been filed in the Circuit Court of Ap-

peals (fol. 971). Whether or not leave to appeal should be granted in the present case, *never* was before the Circuit Court of Appeals, and has never been passed upon by it. There was not before the Circuit Court of Appeals the question whether such leave must be applied for before the expiration of the time to appeal, and the discussion of this question by the Circuit Court, although clearly correct, was pure *dictum*. Therefore, the only question in the present case is whether a Circuit Court of Appeals acquires jurisdiction of an appeal from an order granting allowances in a proceeding governed by Chapter X of the Chandler Act, when *no* application to it for leave to appeal has been made. This was the very question decided by the *Dickinson* case:

"Our view, however, is that appeals from all orders making or refusing to make allowances of compensation or reimbursement under Chap. X of the Chandler Act may be had only at the discretion of the Circuit Court of Appeals."

This disposes of the first and second specifications of error.

The third specification of error is disposed of by *Alaska Packers v. Pillsbury*, 301 U. S. 174. If a Circuit Court of Appeals may not by a *rule* abrogate a Statute, certainly a *decision* by it can have no such effect.

The fourth specification of error is refuted by the opinion of the Circuit Court. It did not receive the motion to consolidate the appeals as an application for leave to appeal (fol. 973), and the order was made "without prejudice to a motion to dismiss said appeals" (fol. 756), and the attorney for the appellants never intended to apply for leave to appeal (fols. 906; 933).

As to the reasons propounded for granting the writ:

A conflict between the present case and *Boater v. Savings Bank*, 92 Fed. 2nd 404 and *Wilson v. Alliance Life*,

102 Fed. 2nd 365, cannot exist, since neither case involved procedure under the Chandler Act.

There is no basis for the suggestion that the decision appealed from will give rise to confusion—it has merely followed the decision of this Court on a narrow specific question. Other Circuit Courts of Appeal are already following the *Dickinson* case (*In re Donahoe's Inc.*, 110 Fed. 2nd 813), and confusion would arise only if the present petition were granted.

The third reason assigned for granting the writ assumes erroneously that the appellants have tardily applied for leave to appeal, and that such leave was denied, and that such an order denying such application is here for review. Such is not the fact as we have already pointed out.

The fifth reason assigned for granting the writ assumes that because allowances are substantial, they must and should be reviewed. The services rendered were also substantial, and the only question that can be involved is whether there has been an abuse of discretion (*Dickinson Industrial Site, Inc. v. Cowan*). With so large a number of bondholders (not one of whom have appealed), "in one of the most extensive mortgage guaranty enterprises in New York" (fol. 979), where the allowances have already been carefully passed upon by a Special Master and a District Judge, this is hardly likely.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ROGERS & WHITAKER,
LATSON & TAMBLYN,
GROSVENOR M. CALKINS,
Pro Se.

ALMET R. LATSON, JR.,
Of Counsel.

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MAY 28 1940

CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1939

No. **9** **69**

RECONSTRUCTION FINANCE CORPORATION, PRU-
DENCE-BONDS CORPORATION, PRESIDENT AND
DIRECTORS OF THE MANHATTAN COMPANY,
AND THE MARINE MIDLAND TRUST COMPANY
OF NEW YORK, Petitioners

v.

PRUDENCE SECURITIES ADVISORY GROUP, INDE-
PENDENT PRUDENCE BONDHOLDERS COM-
MITTEE, *et al.*

RESPONSE OF METZ COMMITTEE, ITS SECRETARY
AND COUNSEL TO THE PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT.

✓
MARK HYMAN,
Counsel for the Metz Committee,
its Secretary and Counsel,
19 Rector Street,
New York, N. Y.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939

No. _____

RECONSTRUCTION FINANCE CORPORATION,
PRUDENCE BONDS CORPORATION, PRESI-
DENT AND DIRECTORS OF THE MANHAT-
TAN COMPANY, AND THE MARINE MID-
LAND TRUST COMPANY OF NEW YORK,
Petitioners

v.

PRUDENCE SECURITIES ADVISORY GROUP,
INDEPENDENT PRUDENCE BONDHOLDERS
COMMITTEE, *et al.*

**RESPONSE OF METZ COMMITTEE, ITS SECRETARY
AND COUNSEL TO THE PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT.**

The Metz Committee

Adam Metz, Charles S. Oakley and Edward W. Smith (called the Metz Committee) represented 1,891 separate bondholders, holding \$2,126,500 of bonds in the Sixth and Twelfth Series. They, their Secretary, and their counsel functioned from March 28, 1936 until the Reorganization Plan, approved January 18, 1938, was consummated by the delivery of the collateral in all Series to a new Corporate Trustee, under Supplemental Trust Agreement dated as of March 1, 1938. By order dated February 14, 1939, they were awarded as follows:

Committee	\$1,500.00
Secretary	3,500.00
Counsel	35,000.00
Expenses	3,786.07
<hr/>	
Total	\$43,786.07

They assumed the major responsibility in the trial, condensed into 945 printed pages, upon which the Parity issue and the inequity of the General Plan were determined by the Special Master, who adopted, in large part, the findings proposed by this Committee, after four briefs and oral arguments on behalf of this Committee. Thereafter, they assumed major responsibility in refining the Debtor's Plan so as to bring it in harmony with law. The benefits to the estate directly traceable thereto total \$4,850,000 (detailed in briefs below).

"It [the Metz Committee] performed valuable work through its counsel generally and particularly in the refining of the plans and on the parity issue." (Special Master, November 30, 1938.)

The Metz Committee and its counsel "took a leading part in the so-called parity question." (Prudence-Bonds Corporation, August 19, 1938.)

The Metz Committee generally and on the parity issue "rendered substantial and constructive services." (Jerome Thralls of Reconstruction Finance Corporation, August 20, 1938.)

The Metz Committee and its counsel "rendered useful services to the bondholders in both the parity question and the plans of reorganization." (McGrath & Cowin, Trustees for The Prudence Company, October 22, 1938.)

"Counsel for the Metz Committee bore the brunt of the parity litigation." (John R. Walsh as amicus curiae, February 8, 1940.)

Messrs. McGrath and Cowin further show that the Metz Committee "did obtain the cooperation of Central Hanover", which enabled the Trustees of the Debtor

"to maintain intact their servicing organization during the reorganization" and thereby "measurably aided the final accomplishment of the reorganization." (McGrath & Cowin, October 22, 1938; Central Hanover Bank & Trust Co., May 7, 1938.)

Prudence-Bonds Corporation

Prudence-Bonds Corporation, the Debtor, had \$50,000 of paid-in capital, which it immediately loaned to The Prudence Company, Inc., its sole stockholder. With only this capital, it issued to the public bonds totaling \$56,389,300, against real estate mortgages totaling that exact sum. The Prudence Company, Inc., guaranteed such bonds. The guarantor had \$10,000,000 of capital, against which it not only guaranteed the aforesaid bonds, but also issued or guaranteed certificates or mortgages totaling an additional \$71,505,148.

On January 2, 1932, the Minutes of The Prudence Company, Inc., indicated that it had withdrawn \$1,650,000 from special funds which it could not pay back because it had free assets of only \$1,200,000. On the same day, The Prudence Company, Inc., as guarantor, invoked the provision that the amounts due at maturity on the guaranteed bonds need not be paid until eighteen months after due date.

On June 8, 1932, The Prudence Company, Inc., borrowed \$20,000,000 from Reconstruction Finance Corporation. The Reconstruction Finance Corporation did not acquire thereby any direct interest in the Debtor; nor did it acquire thereby any of the Prudence Bonds of the Debtor. Its interest is indirect merely, because it controls the stock of two companies (formerly affiliated) which hold some Prudence Bonds.

On June 29, 1934, Prudence-Bonds Corporation (the Debtor) petitioned for reorganization. As of December 31, 1935, it had outstanding bonds totaling \$56,389,300, with

4

accrued interest of \$7,024,391, against which it had the following in eighteen different Series:

Cash collateral	\$1,979,105
Mortgages in good standing	3,950,587
366 defaulted mortgages, totaling	47,751,865

The Trust Agreements under which these mortgages were held contained no provisions permitting modification of the underlying mortgages; with the result that 152 administrative orders had to be made, after notice and hearing, for permission to foreclose, to sell, to vary the terms of the underlying mortgages, to accept deeds in lieu of foreclosure, to lease the property, to make alterations or repairs, to consent to plans of reorganization, and the like.

The Reorganization Plans

The Debtor's original plan of February 11, 1936 reduced the fixed interest of the bondholders from $5\frac{1}{2}\%$, to $3\frac{1}{2}\%$, cumulative if earned, plus 1% if earned non-cumulative; appropriated all the profits of servicing to the old stockholders; appropriated the profits made by purchasing bonds at a discount to the old stockholders; permitted the farming out of insurance and similar matters to privately owned affiliated corporations; limited the arrears of interest to amounts which might be collected from the over-due interest on the collateral; gave the old stockholders control of the Board and four out of seven voting trustees; limited the term of the bondholders' voting trustees to one year, with annual re-elections; reserved the entire equity and profits from handling and servicing of the collateral to the old stockholding group. These weaknesses were all corrected under the following circumstances.

On December 8, 1936, counsel for the Metz Committee argued the illegality of the plan before the Special Master;

and in the course of such argument, the Special Master indicated "that the then existing plans might not be approved even though all other except the Sixteenth Series and ourselves [Metz Committee] had withdrawn objections as aforesaid". (Bernstein, of counsel to Metz Committee, Sept. 6, 1938)

Between December 8, 1936 and January 4, 1937, continuous conferences were held by counsel for the Metz Committee, with counsel for the Debtor, for Reconstruction Finance Corporation, and for the 77B Trustees; with the result stated in the brief of Reconstruction Finance Corporation, as follows:

"Following ten hearings on the Debtor's General Plan, conferences were held by representatives of the Debtor, its counsel, the Debtor's Trustees and their counsel, R.F.C., and the Metz Committee, as a result of which the Debtor promulgated its Amended General Plan of January 20, 1937 * * *. In all major respects the Debtor's General Plan of January 20, 1937 was adopted" by the Special Master.

POINT I

No abuse of discretion by the Special Master and the Trial Court are asserted against the allowance to the Metz Committee, its Secretary and Counsel.

"Unlike appeals from other orders, appeals from compensation orders therefore normally involve only one question of law—abuse of discretion". (*Dickinson Industrial Site v. Cowan*, 84 Law Ed. Advance Opinions, 549, at p. 553)

The constructive services outlined herein preclude a charge that the allowances exceeded what was discretionary. "Service rendered to and benefits received by the

estate" (*Dickinson* case at p. 553) have been mathematically demonstrated and have been universally conceded even by the appellants.

In its brief below, the Reconstruction Finance Corporation claimed no abuse of discretion, saying merely: "It is submitted that the allowances to this [Metz] Committee and its counsel should be substantially reduced". A far cry from an abuse of discretion.

In *Pollak v. Port Morris Bank*, 257 N. Y. 287, leave to appeal, filed too late, was denied; the Court saying:

"This record discloses no question of law which would induce the court to disregard the defect in the application to allow the appeal even if it had power to do so."

POINT II

The petition for certiorari discloses no important question of law which has not been authoritatively determined by this Court.

In the hearing before the Senate Committee on Judiciary, 74th Cong., 1st Sess., on S. 2176, on March 25, 1935, the Chief Justice said (p. 7):

"Cases should not go to the Supreme Court of the United States simply because of the amount of money involved, because of the character of prominence of the parties, or because of the counsel. The question before the Supreme Court is, manifestly, the importance of the question of law involved, the importance of an authoritative determination by the tribunal invested with that very important function."

Every point urged by appellants has been authoritatively determined by this Court adversely to the appellants' contentions; as follows:

(a) Appeals from allowance orders are discretionary with the Circuit Court of Appeals, which should allow appeals only in case of a manifest abuse of discretion. (*Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172; *Dickinson Industrial Site v. Conban*, 84 Law Ed. 549.)

(b) Where the rules or decisions of a Circuit Court of Appeals provide for methods of appeal which contravene the statute, such rules are void and afford no comfort to an appellant who relies thereon. (*Alaska Packers Assn. v. Pillsbury*, 301 U. S. 174.)

(c) A ministerial act, such as certifying a record on appeal (or, here, consolidating the records on appeal) is not the equivalent of the judicial act of allowing an appeal. The record in *Alaska Packers Assn. v. Pillsbury*, 301 U. S. 174, shows that the learned Solicitor General (now Mr. Justice) Reed urged that the certifying of a record by the court below was equivalent to the allowance of the appeal, and in his brief prayed that "the case be remanded to the court below with instructions to proceed to determine whether the appeal has, in fact, been allowed". This court denied such prayer by dismissing the appeal absolutely and without condition.

Likewise, in the case at bar, the Circuit Court of Appeals held that it had not, by consolidating the appeals, allowed the appeals (R. 973).

(d) The court below is without jurisdiction to entertain an allowance of an appeal when the petition therefor is not made within the time prescribed by law. (*Old Nick Williams Co. v. U. S.*, 215 U. S. 541.)

Conclusion

The petition for certiorari herein shows no merit in the main appeal and presents no question that has not been authoritatively determined by this Court.

In the court below no petition for appeal has yet been made; and particularly no petition has been filed showing any abuse of discretion in the allowances to the Metz Committee, its Secretary, and counsel.

Dated: New York, N. Y., May 27, 1940.

Respectfully submitted,

MARK HYMAN,
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1940.

No. 69.

**RECONSTRUCTION FINANCE CORPORATION, PRU-
DENCE BONDS CORPORATION, PRESIDENT AND
DIRECTORS OF THE MANHATTAN COMPANY, AND
THE MARINE MIDLAND TRUST COMPANY OF
NEW YORK,**

Petitioners,

v.

**PRUDENCE SECURITIES ADVISORY GROUP, IN-
DEPENDENT PRUDENCE BONDHOLDERS
COMMITTEE, et al.,**

Respondents.

**BRIEF FOR RESPONDENTS PRUDENCE SECURITIES ADVISORY
GROUP AND PERCIVAL E. JACKSON AND CLINTON T. ROE;
INDEPENDENT PRUDENCE BONDHOLDERS' PROTECTIVE COM-
MITTEE AND GEORGE M. JAFFIN AND LEONARD KLABER;
TENTH SERIES COMMITTEE AND GROSVENOR CALKINS; SIX-
TEENTH SERIES COMMITTEE AND LATSON & TAMBLYN AND
ROGERS & WHITAKER; AND SIXTH AND TWELFTH SERIES
COMMITTEE AND SCRIBNER & MILLER AND MARK A. HYMAN
AND SAMUEL SILBIGER.**

JOHN GERDES,

Counsel for Respondents.

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& TAMBLYN AND ROGERS & WHITAKER; AND SIXTH AND
TWELFTH SERIES COMMITTEE AND SCRIBNER & MILLER
AND MARK A. HYMAN AND SAMUEL SILBIGER.

Opinions Below.

The opinions (R. 319-328) in the Circuit Court of Appeals
for the Second Circuit (majority opinion by Swan and
Patterson, JJ., and dissenting opinion by A. N. Hand, J.)
are reported in 111 F. (2d) 37.

Question Presented.

The question: Did the Circuit Court of Appeals for the Second Circuit act properly and within its authority, after the time to appeal had expired, in dismissing various appeals, taken under Section 250 of the Bankruptcy Act from orders granting allowances to attorneys and parties, because appellants failed to apply for, or secure, allowance of such appeals by the Circuit Court of Appeals?

Statutes and Rules Involved.

The pertinent statutes and rules will be found in the Appendix A, pp. 25-28, *infra*.

Statement.

The reorganization proceeding has been pending since 1934. During the course of the proceeding eighteen separate plans of reorganization and one general plan of reorganization, covering eighteen series of outstanding bonds aggregating over \$55,000,000 (R. 193), each series being secured by a separate indenture and having a separate trustee, were confirmed.

A Special Master was appointed, and reported, upon the applications filed for allowances. The recommendations of the Special Master were accepted without substantial change by the District Judge.

The allowances made in the orders from which appeals were taken fell into two categories: first, allowances aggregating \$478,912.12 (R. 185) for services and disbursements connected with the reorganization; and second, allowances aggregating \$626,097.20 (R. 204) to the corporate trustees and their attorneys for the amounts due to them for "servicing" mortgages and real property under the terms

of eighteen trust indentures securing eighteen series of bonds and other services in the proceeding.

The orders fixing allowances were made and entered on various dates from February 14, 1939 to November 6, 1939 (R. 201-3, 206); the earlier date being the date of the order fixing the allowances to respondents Prudence Securities Advisory Group (hereinafter referred to as Securities Group) Jackson and Roe (R. 1-5), and the later date being the date of the order fixing the allowances to the corporate trustees and their attorneys (R. 166-182).

Petitioners herein attempted to take appeals to the Circuit Court of Appeals for the Second Circuit (R. 92-161, 189, 207-222) from the orders of the District Court which made, denied or deferred payment of the allowances herein, by proceeding on the theory that allowance of the appeals by the Circuit Court of Appeals was unnecessary. None of the appellants sought or obtained leave to appeal from the Circuit Court of Appeals (R. 320).

Fifty-four notices of appeal were filed by 28 different parties. Only two of the appellants—petitioners Reconstruction Finance Corporation (hereinafter referred to as R. F. C.) and the Prudence-Bonds Corporation (hereinafter referred to as the New Corporation)—sought to reduce the allowances (R. 92-141). Ten appellants sought allowances which the District Judge had denied *in toto* (R. 142, 145, 147, 153, 158). Sixteen, including petitioners President and Directors of the Manhattan Company (hereinafter referred to as Manhattan Company) and Marine Midland Trust Company of New York (hereinafter referred to as Marine Midland), sought increased allowances (R. 143, 146, 148, 151, 154, 156, 159, 160, 216-222).

These appeals were taken in two groups. The first group, including all appeals from the orders granting allowances to respondents, were consolidated by order of the Circuit Court of Appeals dated March 22, 1939 (R. 252), which was after the expiration of the time within which an appeal could be taken from the order making allowances to respondents

Securities Group, Jackson and Roe.¹ This order was made "without prejudice to a motion to dismiss said appeals" (R. 252). The second group of appeals were independently consolidated (but not with those of the first group) by order dated January 8, 1940.

The formal motion of respondents Securities Group, Jackson and Roe to dismiss the appeals of petitioners New Corporation and R. F. C. (these being the only appeals attempted from the order granting allowances to said respondents) was made November 30, 1939 (R. 276-279). The Circuit Court of Appeals for the Second Circuit, refusing to follow the opinion of the Circuit Court of Appeals for the Seventh Circuit in *In re Albert Dickinson Co.*, 104 F. (2d) 771, and adhering to its decision in *London v. O'Dougherty*, 102 F. (2d) 524, denied the motion by order made December 7, 1939 (R. 279) on the ground that the appeals had properly been taken as of right and allowance by the Circuit Court of Appeals was unnecessary. Such respondents secured an order from this Court on March 6, 1940, extending to May 6, 1940, their time to apply for a writ of certiorari to review the order of December 7, 1939. (The *Dickinson* case had been argued in this Court in February but had not then been decided.)

The decision in the *Dickinson* case (*Dickinson Industrial Site, Inc. v. Cowan*, 309 U. S. 382), was announced on March 11, 1940. The following day these respondents moved for a re-argument of their motion to dismiss the appeals (R. 287-294). Some of the other respondents also moved to dismiss the appeals from the orders fixing their allowances (R. 294-300).

The Circuit Court of Appeals, by order dated April 23, 1940, granted these motions and dismissed all the appeals

¹ The order granting allowances to these respondents was made February 14, 1938; copies of said order, with notice of entry, were served upon appellants on February 15, 1938; and proof of service was filed in the Clerk's office within five days. (R. 291)

(R. 330-337). This Court then granted the writ of certiorari which brings up said order of April 23, 1940, for review.

The Circuit Court of Appeals never passed upon the merits of the appeals.

The following petitions for writs of certiorari to review orders making or refusing allowances in this case are awaiting the decision of this Court on this appeal: *Manufacturers Trust Co. et al. v. Prudence Securities Advisory Group et al.*, No. 210; *Endelman et al. v. Prudence-Bonds Corp. et al.*, No. 211; *Kelby v. Prudence Securities Advisory Group et al.*, No. 214; *Prudence Realization Corp. v. Prudence-Bonds Corp. et al.*, No. 259; *Davison v. Prudence Securities Advisory Group et al.*, No. 273. The pending petition for a writ of certiorari in *Denham v. Munson Line, Incorporated*, No. 284, also awaits a determination of the questions presented herein.

Summary of Argument.

This Court has held (*Dickinson Industrial Site v. Cowan*, 309 U. S. 382) that an appeal under section 250 of the Bankruptcy Act may be had only upon allowance by the Circuit Court of Appeals, regardless of the amount involved in the order from which the appeal is taken, although appeals from other orders in the proceeding which involve \$500 or more may be taken without such allowance.

Under section 250, in conjunction with sections 24 and 25 of the Bankruptcy Act, an appeal from an order allowing compensation for services in proceedings under Chapter X, must be taken by filing a petition for allowance of the appeal with the appellate court within thirty days after service of a copy of the order with notice of entry or forty days after entry of the order, if no notice is served.

As no petitions for leave to appeal were at any time filed with the Circuit Court of Appeals by petitioners and

the other appellants, and no appeals were ever allowed by it, the Circuit Court of Appeals had no jurisdiction to consider the merits of the appeals. Its order of April 23, 1940, dismissing such appeals, was the only course open to it.

General Order in Bankruptcy No. 36 which makes Rule 73 of the Federal Rules of Civil Procedure applicable to appeals in bankruptcy "except as otherwise provided in the Act," does not subject appeals under section 250 to the provisions of Rule 73 because such Rule makes no provision for appeals which require the allowance of the appellate court.

In any event, by its own terms, Rule 73 of the Federal Rules of Civil Procedure is applicable only "when an appeal is permitted by law." An appeal under section 250 is not permitted until the Circuit Court of Appeals has exercised its discretion and granted allowance of the appeal.

Rule 73 was in effect when the *Dickinson* appeal was taken, and its effect was considered. The decision of this Court in that case—that the appeal under section 250 may be taken only upon allowance by the Circuit Court of Appeals—is determinative of the same issue in this case.

The allowance of appeals under section 250 is not a mere formality. The appellate court has a real discretion which should be exercised to prevent undue delay and expense in the consummation of the reorganization. The power of the court should not be whittled away by exceptions.

The *appeal* cannot be *taken* under section 250 without allowance by the appellate court. Failure to secure allowance does not simply affect the scope of the review or the right to be "heard," but there can be no appeal without allowance.

The necessity for allowance of the appeal is jurisdictional. An appeal taken under section 250 without allowance must be dismissed.

Respondents did not waive their objections to the jurisdiction of the appellate court; nor did the question of jurisdiction become *res judicata*.

The *Dickinson* case was not "applied retroactively" by the court below. Even if the *Dickinson* case had never been decided, it is still true that the Circuit Court of Appeals has never secured jurisdiction of these attempted appeals because the statutory requirement of allowance has not been met.

Respondents cannot be deprived of their rights under the statute merely because appellants improvidently relied on the erroneous decision of the Circuit Court of Appeals in another case.

Argument.

1.

The appeal was not properly taken because petitioners failed to apply for or secure its allowance by the appellate court.

Appeals from allowances in proceedings under Chapter X are covered by section 250 of the Bankruptcy Act. This Court has held (*Dickinson Industrial Site v. Cowan*, 309 U. S. 382, 385) that appeals under this section "may be *had*² only at the discretion of the Circuit Court of Appeals" (italics ours), regardless of the amount involved in the order from which the appeal is taken, although appeals from other orders in the proceeding which involve \$500 or more may be taken without allowance by the Circuit Court of Appeals.

Section 250 provides that appeals from orders making or refusing allowances "may, in the *manner* and within the time provided for appeals by this Act, be taken to, and allowed by the Circuit Court of Appeals." (Italics ours.)

² In petitioners' brief (pp. 6, 8, 13, 35) it is erroneously stated this Court held in the *Dickinson* case that appeals from orders on allowances may be "heard" only in the discretion of the Circuit Court of Appeals.

The general provisions for appeals under the Act are in sections 24 and 25. Section 24 permits all appeals to be taken without the necessity of allowance, except appeals from orders involving less than \$500, which "may be taken only upon allowance of the appellate court." As this is the only provision in the Bankruptcy Act dealing with appeals which require allowance by the Circuit Court of Appeals, it is apparent that the *manner* of taking appeals under section 250 is that which is prescribed under section 24 for appeals from orders involving less than \$500. Appeals under section 250 may therefore "be *taken* only upon allowance of the appellate court." (*Italics ours.*)

The time for taking appeals under the Act is fixed by section 25, which provides that "appeals under this Act to the Circuit Court of Appeals * * * shall be taken within thirty days after written notice to the aggrieved party of the entry of the * * * order * * * complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry."

The orders of the District Court from which petitioners attempted to appeal, were made on various dates from February 14, 1939 to November 6, 1939. The times to appeal from such orders expired on various dates from March 17, 1939, to December 16, 1939; the earlier date being the last day on which appeal from the order making allowances to respondents Securities Group, Jackson and Roe could be filed. No application for leave to appeal was made to the Circuit Court of Appeals, or granted, during this period, *or at any other time*. No appeal was therefore properly taken to the Circuit Court of Appeals, and it was without jurisdiction to consider the merits of the appeals.

Even if the lower court had desired to do so, it had no power to allow the appeal after the expiration of the statutory period. As recently stated by this Court in an analogous situation, "an amendment . . . would be timely only if filed within the period provided by the statute for

filing the original return. No other time limitation would have statutory sanction. To extend the time beyond the limits prescribed in the Act is a legislative not a judicial function" (*Riley Invest. Co. v. Commissioner of Internal Revenue*, U. S. Supreme Court, November 12, 1940 (not officially reported), 85 L. Ed. 35, 37).

2.

Rule 73 of the Federal Rules of Civil Procedure is not applicable to appeals under section 250 of the Bankruptcy Act.

General Order in Bankruptcy No. 36, as it was in effect prior to February 13, 1939, provided that appeals under the Bankruptcy Act were regulated "except as otherwise provided in the Act," by the rules governing appeals in equity. When the old Equity Rules were superseded by the new Federal Rules of Civil Procedure on September 16, 1938, appeals in equity had to be taken under Rule 73 of the new Federal Rules of Civil Procedure. This Rule therefore then also became applicable to appeals in bankruptcy, "except as otherwise provided in the Act."

General Order No. 36 was revised (effective as of February 13, 1939) to provide that appeals, "except as otherwise provided in the Act," shall be regulated by the rules governing appeals in civil actions in the United States, including the Rules of Civil Procedure for the District Courts of the United States. This amendment merely changed the form and not the substance of the General Order, since, as indicated above, the new Federal Rules had previously become applicable to appeals in bankruptcy, "except as otherwise provided in the Act."

As Rule 73 makes no provision for appeals which can be taken only upon allowance of the appellate court, it is clear that appeals under section 250, as well as appeals under section 24 which require allowance, are within the exceptions

"otherwise provided in the Act." This view has been taken by the circuit courts of appeal for the Second Circuit (in this case), the Third Circuit (*In re Donahoe's, Inc.*, 110 F. [2d] 813), the Fourth Circuit (*Milbank, Tweed & Hope v. McCue*, 111 F. [2d] 100, 102), and the Tenth Circuit (*Coursey v. International Harvester Co.*, 109 F. [2d] 774, 777). This is also the position taken in 2 Collier on Bankruptcy (14th Ed.), page 918. Respondents have found no authority to the contrary.

Even if Rule 73 were held to be applicable to appeals under section 250, by its terms the Rule applies only "when an appeal is permitted by law." Appeals under section 250 are permitted only upon allowance of the appellate court. Since allowance of the appeal was neither sought nor given in this case, the appeal was not "permitted."

Any other construction of the language of General Order No. 36 or Rule 73 would completely nullify the clearly expressed statutory intent to give the Circuit Courts of Appeals discretion as to the appeals to be allowed under section 250.

The changes made in section 24 by the Chandler Act in 1938 were not intended to take away the discretion of the appellate court as to the allowance of appeals, but, as stated by this Court in the *Dickinson* case, 309 U. S. 382, at pages 387-388, they were intended to secure the elimination, so far as practicable, "from section 24 of the old distinctions between 'controversies arising in bankruptcy proceedings' and 'proceedings' in bankruptcy. There was not the slightest intimation of any dissatisfaction with the rule of *Shulman v. Wilson-Sheridan Hotel Co.*, *supra*, or with section 250 as it passed the House." (In the *Shulman* case, 301 U. S. 172, this Court held that an appeal requiring allowance by the appellate court must be dismissed if such allowance has not been secured.)

The decision of this Court in *Dickinson Industrial Site v. Cowan*, 309 U. S. 382, is direct authority for the proposition that Rule 73 is not applicable to appeals under section 250.

The petition for leave to appeal in that case was filed November 25, 1938 (*In re Albert Dickinson Co.*, 104 F. [2d] 771, 773), after the new Federal Rules went into effect on September 16, 1938.³ The applicability and effect of Rule 73 were argued before this Court (Petitioner's brief in *Dickinson* case, pp. 21 and 33-36). This Court nevertheless held that appeals under section 250 "may be had only at the discretion of the Circuit Court of Appeals" (309 U. S. 382, 385).

The Circuit Court of Appeals also considered the applicability of Rule 73 in the *Dickinson* case. It stated in its opinion (p. 774) that appeals which are allowable only in the discretion of the appellate court under sections 24 and 250 are not covered by Rule 73, but that "all other appeals from orders or decrees entered by the courts of bankruptcy . . . must be taken as appeals in equity suits, namely, as provided for by section 73 of the Rules of Civil Procedure."

3.

The discretion of the appellate court as to the allowance of the appeal is not a mere formality, but is intended to enable the court to prevent frivolous and unnecessary appeals.

The discretion vested in the appellate court to allow appeals under section 250, is a real discretion, to be wisely exercised to save time and money in the administration of

³ The new Federal Rules, so far as applicable to appeals in bankruptcy, became effective September 16, 1938 (*supra*, p. 9). Petitioners erroneously state in their brief (pp. 10, 15, 41-42) that such Rules were not applicable at the time of the *Dickinson* appeal and did not become applicable until the revised form of General Order No. 36 became effective on February 13, 1939.

the estate. The allowance of the appeal is not a mere matter of form.⁴

An excellent statement of the necessity for giving the appellate courts discretion in the allowance of appeals from orders making allowances of compensation in reorganization proceedings under Chapter X of the Bankruptcy Act, appears in the *Dickinson* case, 309 U. S. 382, 388-389:

"The history of fees in corporate reorganizations contains many sordid chapters. One of the purposes of § 77B was to place those fees under more effective control. Buttressing that control was § 77B(c)(9) which, together with former § 24(b), made appeals from compensation orders discretionary with the appellate court. We should not depart from that policy in absence of a clear expression from Congress of its desire for a change. Fee claimants are either officers of the court or fiduciaries, such as members of committees, whose claims for allowance from the estate are based only on service rendered to and benefits received by the estate. Allowance or disallowance involves an exercise of sound discretion by the court based on that statutory standard. Unlike appeals from other orders, appeals from compensation orders therefore normally involve only one question of law—abuse of discretion. These factors not only emphasize the appropriateness of the separate treatment by Congress of appeals from compensation orders; they reinforce the interpretation of § 250 which restricts these appeals. For certainly it seems sound policy to require fiduciaries to make out a *prima facie* case of inequitable treatment in order to be heard before the appellate court. To allow these appeals as a matter of right is to encourage an unseemly parade to the appellate courts and to add to the time and expense of administration. We will not resolve any ambiguities in favor of that alternative."

⁴ The vesting of discretion with the appellate court in the allowance of appeals under section 250 stems back to section 24(b) as amended in 1926. Prior to 1926 no discretion lay with the Court as to the allowance of appeals or petitions to revise. Allowance was a mere matter of form.

To permit appeals to be taken as a matter of right, as proposed by petitioners, and then have the court determine at the hearing on the merits whether it will hear the appeal, would not only violate the express language of sections 24 and 250, but would defeat the purpose for which discretion in the allowance of appeals was vested in the appellate court. The consummation of the reorganization will be delayed, and large expense will be incurred by the estate and the parties, prior to the hearing—only to find, in most cases, that the Circuit Court of Appeals will exercise its discretion by refusing to pass upon the merits of the appeal.

There can be no better illustration than this case of the need for restricting appeals from allowances. The record on this appeal consists of 25 separate volumes of original papers and exhibits, containing approximately 17,000 pages, many of them in compact single-spaced typewriting. (Petitioners, in their motion to dispense with the printing of the record, estimated that it would cost at least \$27,500 to print such record.) Many days were spent in the hearings on the applications, before a special master and a judge, both of whom had been in close contact with the services of the applicants as they were being rendered. Full opportunity to be heard was given to the applicants and the interested parties. The Special Master and the Judge were in close accord as to the amounts to be allowed.

After two judicial officers had passed upon the merits of the applications, a single copy of this vast amount of material, in its original typewritten form, was dumped upon three judges of the Circuit Court of Appeals—all of them unfamiliar with the services rendered. Sixteen appellants (including two of the petitioners) sought increased allowances, ten appellants who had been refused allowances below sought allowances from the appellate court, and two appellants (included among the four petitioners) sought to have all the allowances reduced. An adequate review of the merits of all of these claims would involve a detailed exami-

nation of the entire record. This would engage the entire time of the court for weeks. And, in all probability, the final conclusion of the court would not vary much from the results reached by the Special Master and the Judge below.

No question is raised in this case as to the good faith of the appellants who are the petitioners in this Court. But the decision in this case will serve as a precedent for other cases, and if the power of the appellate courts to curb, at their threshold, indiscriminate appeals from orders fixing allowances, is not safeguarded, our appellate courts will literally be swamped with the mass of work thrown upon them. The expense in taking appeals from allowances is small; the record need not be printed, since section 250 provides that the appeal "shall be summarily heard upon the original papers." Unless the appellate courts have power to pass upon the good faith and possible merit of such appeals at their inception, a single creditor or stockholder, regardless of the amount of his claim, may take a frivolous and obstructive appeal which will tie up a proceeding for months, especially if the appeal is taken at the beginning of the summer recess.

4.

Failure to secure allowance of the appeal does not merely affect the scope of review or the right to be heard. No appeal can be taken without allowance.

Under the express provisions of sections 250 and 24, it is the "appeal" which may be "taken" only upon allowance of the appellate court. The "allowance" does not determine the scope of the review; nor does it merely affect the right to be "heard." It is jurisdictional—there is no right to appeal without allowance of the appeal. As this Court stated in the *Dickinson* case (309 U. S. 382, 385): "appeals

from all orders making or refusing allowances of compensation or reimbursement under Chapter X of the Chandler Act may be *had* only at the discretion of the Circuit Court of Appeals." (Italics ours.)

5.

The necessity for allowance of the appeal is jurisdictional. An appeal taken under section 250 of the Bankruptcy Act without allowance must be dismissed.

Where a statute vests in the appellate court discretion as to the allowance of an appeal, it has uniformly been held by this Court that the appeal is not effective, and must be dismissed, unless the allowance of the appeal is secured, or the petition for such allowance is filed, before the time to appeal has expired.

Recent cases in which this Court has held that failure to apply for leave to appeal within the appeal period, where allowance of the appeal is required by statute, is a jurisdictional defect which requires a dismissal of the appeal, are *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172; *Meyer v. Kenmore Granville Hotel Co.*, 297 U. S. 160; *McCrone v. United States*, 307 U. S. 61; *Alaska Packers Asso. v. Pillsbury*, 301 U. S. 174; *Toledo Scale Co. v. Computing Scale Co.*, 261 U. S. 399.

In *Dickinson Industrial Site v. Cowan*, 309 U. S. 382, this Court reaffirmed the rule of *Shulman v. Wilson-Sheridan Hotel Co.*, *supra*, by stating (p. 385) that the result of the new language found in section 250 "plainly was to carry into the new act the rule of *Shulman v. Wilson-Sheridan Hotel Co.*"

The decisions of this Court in *Taylor v. Voss*, 271 U. S. 176; *Duryea Power Co. v. Sternbergh*, 218 U. S. 299; *Holden v. Stratton*, 191 U. S. 115; and *Bryon v. Bernheimer*, 181

U. S. 188; which are cited in the dissenting opinion of Judge A. N. Hand (R. 326-328) and in the brief of petitioners (pp. 44-45); are not in conflict with the foregoing propositions. None of these cases involved an appeal under a statute giving discretion to the appellate court as to the allowance of the appeal. Therefore in none of them did this Court hold that a statutory requirement that an appeal would lie only in the discretion of the appellate court could be ignored and an appeal be taken without allowance. All of these cases involved appeals under section 24 of the Bankruptcy Act before such statute gave to the appellate court any discretion as to the allowance of appeals. It was the amendment of section 24 in 1926 which first vested such discretion in the appellate court.⁵

Nor are the decisions in *Crump v. Hill*, 104 F. (2d) 36 (Petitioners' brief, pp. 42, 43, 44), and *Crescent Wharf &*

⁵ Petitioners' principal argument is based upon a failure to realize the fundamental change made in section 24(b) by its amendment in 1926. An interesting example of the manner in which they were led astray by their failure to realize the significance of the 1926 amendment appears on page 28 of their brief. After admitting the general proposition which is the core of *respondents'* contention, that "a petition for appeal filed under Section 24(a) [which provides for appeals as of right] could not serve as an application for leave to appeal under Section 24(b) [which provides, since 1926, for allowance only at the discretion of the appellate court], and *vice versa*," and citing (in note 13) a number of cases in support of the proposition, they attempt to graft two exceptions to the general rule, citing the *Holden*, *Duryea* and *Taylor* cases, *supra*, in support of such alleged exceptions. But *all* of the cases cited by them in support of the general proposition dealt with section 24(b) *after* the 1926 amendment, and are squarely in point, while *all* of the cases cited in support of the supposed exceptions dealt with section 24(b) *before* the 1926 amendment and are not exceptions at all, since no discretion was given to the court by the statute involved.

Warehouse Co., 93 F. (2d) 761 (Petitioners' brief, pp. 48-49), authority for appeals requiring allowance at the discretion of the court. Each involved an appeal as of right; allowance was merely a matter of form.

The Circuit Courts of Appeals for every circuit except the Fifth Circuit, have held that failure to secure a required allowance is fatal to the attempted appeal. (See Appendix B, *infra*, pp. 29-30, for the citations of 58 cases, including cases in every circuit, which hold to this effect.) The decision of the Circuit Court of Appeals for the Fifth Circuit in *Shoreland Co. v. Conklin*, 30 F. (2d) 489, was in accord with the decisions in all the other circuits, but in *Baxter v. Savings Bank*, 92 F. (2d) 404, and *Wilson v. Alliance Life Ins.*, 102 F. (2d) 365, the court held to the contrary. In the *Baxter* case, the Circuit Court of Appeals for the Fifth Circuit erroneously cited the *Duryea*, *Holden* and *Bryon* cases, *supra*, of this Court as authority for its conclusion, although such cases, as hereinbefore stated, involved appeals under section 24 of the Bankruptcy Act before the amendment of 1926 vested discretion in the appellate court as to the allowance of appeals. In the *Wilson* case the court relied entirely upon its own decision in the *Baxter* case. In neither case did the court indicate that it had knowledge of the decisions of this Court in the *Shulman*, *Meyer*, *McCrone*, *Alaska Packers*, and *Toledo Scale* cases, *supra*; nor did the court refer to its own prior decision in the *Shoreland* case, *supra*; or to any of the 58 cases in the other circuits. Actually, in *Crump v. Hill*, *supra* (a decision made after the decisions in the *Baxter* and *Wilson* cases), the same court, passing upon a situation involving an appeal as of right, distinguished such a situation from one involving appeals upon discretionary allowance, and sustained the contention of respondents herein, saying (p. 37), "it will not do to press the analogy here between appeal by notice, and appeal by application and allowance, to the

point of insisting that one is the equivalent of the other, and that as the application for, and the granting of, an appeal cannot be waived, the filing of a notice under Rule 73 cannot be."

Judge Augustus N. Hand, in his dissenting opinion below (R. 326-328), overlooks his own opinion in *In re Glazer's, Inc.*, 66 F. (2d) 513.

In the *Glazer* case, the appellant had filed his petition for leave to appeal with the appellate court within the statutory period. A few days later, but after the expiration of the statutory period to appeal, he discovered that he should have appealed as of right by a petition to a judge of the district court or appellate court. He thereupon petitioned the district judge, who approved and allowed the appeal. The Circuit Court of Appeals, unanimously, in an opinion written by Judge Augustus N. Hand, dismissed the appeal "for lack of jurisdiction," since the filing of the petition with the appellate court had been without effect and the filing of the petition with the district judge had been after the time to appeal had expired. This holding goes beyond the proposition involved herein. In the *Glazer* case the appellant could have appealed as of right and no discretion to refuse the appeal resided in any court or judge. The error consisted merely in filing the petition with the appellate court instead of a judge of the appellate court or district court. No court was deprived of its *discretion* in the allowance of the appeal, and no party was deprived of his right to have the court exercise its *discretion* in allowing the appeal.

6.

Respondents did not waive their objections to the jurisdiction of the appellate court; nor did the question of jurisdiction become *res judicata*.

At the request of respondents, the order consolidating the appeals expressly stated that it was "without prejudice to a motion to dismiss said appeals" (R. 252). Respondents Securities Group, Jackson and Roe subsequently made a formal motion to dismiss the appeals (R. 276-279); secured an order of this Court extending their time to apply for a writ of certiorari to review the order of the Circuit Court of Appeals denying the motion (R. 279-280); before the expiration of such extended time; and after the decision of this Court in the *Dickinson* case, they moved for a reargument of their motion (R. 287-300); and, still before the expiration of the extended time to apply for a writ of certiorari, they secured an order of the Circuit Court of Appeals granting their motion and dismissing the appeals (R. 330-337).

If respondents had expressly consented to the jurisdiction of the Circuit Court of Appeals, such consent would have been ineffective; and when it appeared to the court that it lacked jurisdiction it was its duty to dismiss the appeals on its own motion. *Exporters of Manufacturers' Products v. Butterworth-Judson Co.*, 258 U. S. 365; *Mitchell v. Maurer*, 293 U. S. 237.

7.

The *Dickinson* case (309 U. S. 382) was not "applied retroactively" by the Court below.

The Court below held that petitioners (appellants below) had failed to meet the statutory conditions precedent to the right to appeal and that the appellate court was therefore without jurisdiction. If the decision in the

Dickinson case had never been made it would still be true that the Circuit Court of Appeals lacks jurisdiction to pass upon the attempted appeals of petitioners because petitioners neither applied for nor secured the necessary allowance of their appeals.

The question is whether the erroneous decision of the Circuit Court of Appeals in *London v. O'Dougherty*, 102 F. (2d) 524, while *res judicata* as to the parties in that case, is binding upon these respondents, although they were not parties and never had an opportunity to be heard therein. Shall they be deprived of their rights under section 250 merely because the Circuit Court of Appeals, in another case, misinterpreted the statute?

The rights of respondents under section 250 are substantial: they are not to be subjected to the expense and delay of appeals from the orders making allowances to them unless the appellate court determines upon a preliminary hearing that the appeals have some merit. None of the appellants sought allowance of the appeals from the Circuit Court of Appeals; for they believed it unnecessary. The appellate court at no time exercised the discretion vested in it by statute.

Respondents cannot be deprived of their statutory rights by the erroneous holding of an inferior court in a different case. As Judge Swan said in the opinion below (R. 325), to so hold would "go contrary to elementary principles governing appellate jurisdiction."

Loss through reliance upon the prior decision of an inferior court which later proves to have been erroneous, is unfortunate, and the victim of such reliance may have our sympathy. But he was not compelled to rely upon the decision. He could have protected his rights by actual compliance with the statute and then have appealed, if necessary, to the highest court for the protection of his rights. No matter how much we may sympathize with the man who has slept upon his rights, we cannot, and should

not, give relief to him by depriving others of rights clearly conferred upon them by statute.

The recent decision of this Court in *Alaska Packers Association v. Pillsbury*, 301 U. S. 174, is directly in point. The statute provided for an allowance of the appeal by a judge of the district court or appellate court. Nevertheless the Circuit Court of Appeals for the Ninth Circuit, either overlooking the statute or misinterpreting it, promulgated a rule providing that such appeals should be taken by filing a notice of appeal in the office of the clerk of the district court and serving a copy on the adverse party. Appellant, *relying on the rule*, took his appeal in the manner prescribed by it. A motion was made to dismiss the appeal for failure to secure its allowance. The Circuit Court of Appeals denied the motion. This Court reversed the Circuit Court of Appeals on the ground (p. 177) that, allowance of the appeal not having been secured, "the Circuit Court of Appeals was without jurisdiction to entertain the attempted appeal."

8.

The Circuit Court of Appeals is not a court of final appeal, and it may not disregard the provisions of section 250 of the Bankruptcy Act merely because it had previously construed it erroneously in *London v. O'Dougherty*, 102 F. (2d) 524.

The rule of *stare decisis* does not enable an intermediate appellate tribunal to follow its own previous decisions after a superior appellate court has determined that such decisions were based on an erroneous view of the law. The doctrine "does not apply with full force prior to decision in the court of last resort" (*Posados v. Warner Barnes & Co.*, 279 U. S. 340, 345).

The limitation upon the rule enunciated in the line of cases cited in point IV of petitioners' brief (pp. 50-71) is clearly indicated by the following quotation from the opinion (p. 682, note 9) of this Court in *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673 (a case on which petitioners place reliance—petitioners' brief, pp. 54-56):

“Had there been no previous construction of the statute by the highest court, the plaintiff would, of course, have had to assume the risk that the ultimate interpretation by the highest court might differ from its own.”

Justice Cardozo, lately of this Court, also expressed the same view in *The Nature of the Judicial Process*, pp. 147-148, as follows:

“We will not help out the man who has trusted in the judgment of some inferior court. In his case, the chance of miscalculation is felt to be a fair risk of the game of life, not different in degree from the risk of any other misconception of right or duty. He knows that he has taken a chance, which caution often might have avoided. The judgment of a court of final appeal is felt to stand upon a different basis.”

Under section 24(c) of the Bankruptcy Act and section 240(a) of the Judicial Code, this Court has complete power to review any judgment, decree or order of the Circuit Court of Appeals in proceedings under the Bankruptcy Act. The fact that this Court has discretion as to the allowance of review does not make the Circuit Court of Appeals a court of final appeal. To so hold, would mean that each Appellate Term of the New York Supreme Court, and each Appellate Division of the New York Supreme Court, as well as the New York Court of Appeals, are all courts of final appeal, since certain appeals from such courts can be had only upon allowance of the appellate court. It would also mean that the federal district courts

are courts of final appeal as to matters from which appeals lie under section 250 of the Bankruptcy Act because appeals are allowable only at the discretion of the appellate court.

It is significant that, as conceded in petitioners' brief (p. 53), "this Court has never had occasion to decide expressly that the federal courts have the power, where equity requires, to limit the retrospective effect of an overruling decision of this Court". Many thousands of cases have been decided in this Court which in effect have overruled many more thousands of decisions of circuit courts of appeal. And in *no* instance has any court stated that the rights of parties are to be subsequently determined by the decisions which were overruled. It is apparent that this lack of authority is not due to accident but to the fact that the rule for which petitioners contend is fundamentally unsound and would inevitably produce highly undesirable results.

The overruling of their own decisions by courts of last appeal is unusual. Decisions of this Court which conflict with previous decisions of circuit courts of appeal are anything but unusual, since in most instances writs of certiorari are granted by this Court only when there has been a conflict in the decisions of the courts of the various circuits.

If persons relying upon the earlier decisions of the circuit courts of appeal which are in conflict with later decisions of this Court may have their rights determined by the overruled decisions of the circuit courts of appeals, uncertainty will exist for a number of years as to the law applicable to a given situation; our courts will be clogged with cases in which the issue will be whether one of the parties relied on the decision which was subsequently overruled. And even if one of the parties did rely on the erroneous decision, it would not be fair or equitable, or in conformity with justice, to deprive the other party, who was not responsible for such reliance, of the rights which this Court states he has. If one of two innocent parties

must suffer because of the error of one of them, there is no principle at law or in equity which requires us to hold that the innocent party should suffer for the benefit of the party who erred.

Even the highest court of a state is not a court of final appeal, within the principle contended for, as to questions which may be reviewed by this Court. See *Evans v. Supreme Council, Royal Arcanum*, 223 N. Y. 497, 503, in which the New York Court of Appeals held that reliance upon its previous decision, subsequently reversed by this Court, was no protection to the person relying thereon.

Although this Court did not discuss the question, its decision in *Alaska Packers Assn. v. Pillsbury*, 301 U. S. 174, in actual effect upheld the contention of respondents herein. In that case this Court reversed the Circuit Court of Appeals and directed the dismissal of an appeal taken to that court without allowance, although the appellant below had taken the appeal as of right in conformity with a rule of the Circuit Court of Appeals directing that such appeals be taken in such manner.

Respectfully,

JOHN GERDES,
Counsel for Respondents

December 4, 1940.

APPENDIX A

Bankruptcy Act, Sec. 24, prior to its amendment by the Act of May 27, 1926 (30 Stat. 553):

"Sec. 24. Jurisdiction of Appellate Courts.

"(a) The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

"(b) The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved."

Bankruptcy Act, Sec. 24, as amended by the Act of May 27, 1926 (44 Stat. 664):

"Sec. 24. Jurisdiction of Appellate Courts.

"(a) The Supreme Court of the United States, the circuit courts of appeal of the United States, the Court of Appeals of the District of Columbia, and the supreme courts of the Territories, in vacation, in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases.

"(b) The several circuit courts of appeal and the Court of Appeals of the District of Columbia shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in section 25) the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 25 to be allowed in the discretion of the appellate court.

"(c) All appeals under this section shall be taken within thirty days after the judgment, or order, or other matter complained of, has been rendered or entered."

Bankruptcy Act, as amended by the Act of June 22, 1938 (c. 575, 52 Stat. 840; 11 U. S. C. 47, 48, 521, 650):

"Sec. 24. Jurisdiction of Appellate Courts.

"a. The Circuit Court of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury, shall extend to matters of law only: *Provided further,* That when any order, decree, or judgment involves less than \$500, an appeal therefrom may be taken only upon allowance of the appellate court.

"b. Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

"c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted."

"Sec. 25. Practice on Appeals

"a. Appeals under this title to the Circuit Court of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

"b. Receivers and trustees shall not be required in any case to give bond when they take appeals."

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"Sec. 121. Appellate Jurisdiction.

"Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding."

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"Sec. 250. Appeals.

"Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers."

General Order in Bankruptcy No. 36 prior to the amendment effective as of February 13, 1939:

"36. Appeals.

"Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in equity in courts of the United States."

General Order in Bankruptcy No. 36 after the amendment effective as of February 13, 1939:

"36. Appeals.

"Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the United States, including the Rules of Civil Procedure for the District Courts of the United States."

Rule 73(a) of the Federal Rules of Civil Procedure:

"Rule 73. Appeal to a Circuit Court of Appeals.

"(a) How TAKEN. When an appeal is permitted by law from a district court to a circuit court of appeals and within the time prescribed, a party may appeal from a judgment by filing with the district court a notice of appeal. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule, or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal."

APPENDIX B

Bankruptcy Cases Holding That Failure to Apply for Leave Within the Statutory Period Is Jurisdictional and Requires Dismissal of the Appeals.

First Circuit

Ahlstrom v. Ferguson, 29 F. (2d) 515;
Yglesias & Co. v. Eneglotaria Medicine Co. Inc., 73 F. (2d) 485, pet. for reh. den. 74 F. (2d) 635, cert. den. 295 U. S. 739;
Gorbea v. Soto Gras, 82 F. (2d) 634.

Second Circuit

In re Torgovnick, 49 F. (2d) 211;
In re Federal Photo Engraving Corp., 54 F. (2d) 628;
In re Weinstock, 56 F. (2d) 829;
In re Books, 72 F. (2d) 363;
In re Roe, 87 F. (2d) 693;
In re Combs, 88 F. (2d) 417, cert. den. 302 U. S. 683;
In re C. M. Piece Dyeing Co., 89 F. (2d) 37;
In re Postal Telegraph & Cable Corp., 89 F. (2d) 183;
In re Connecticut Co., 95 F. (2d) 311, cert. den. 304 U. S. 571.

Third Circuit

Jurgenson v. National Oil & Supply Co., 63 F. (2d) 727;
Stein v. Gaetje, 96 F. (2d) 877;
Noble v. Hopewell Nat. Bank, 98 F. (2d) 623;
In re Donahoe's, Inc., 110 F. (2d) 813.

Fourth Circuit

Wingert v. Smead, 70 F. (2d) 351, cert. den. 293 U. S. 567;
Milbank, Tweed & Hope v. McCue, 111 F. (2d) 100.

Fifth Circuit

Shoreland Co. v. Conklin, 30 F. (2d) 489.

Sixth Circuit

Deeley v. Cincinnati Art Pub. Co., 23 F. (2d) 920;
 Humber v. Bankers' Trust Co., 70 F. (2d) 265;
 Capital Endowment Co. v. Kroeger, 86 F. (2d) 976.

Seventh Circuit

In re Perlman, 68 F. (2d) 729;
 In re Johanson, 77 F. (2d) 204;
 In re Wilson-Sheridan Hotel Co., 86 F. (2d) 898, aff'd
 301 U. S. 172;
 In re Kenmore Granville Hotel Co., 90 F. (2d) 151;
 In re Glen Sheridan Realty Trust, 90 F. (2d) 466, cert.
 den. 302 U. S. 727;
 In re Grocery Center, Inc., 91 F. (2d) 176, cert. den. 302
 U. S. 727;
 In re Fearheiley, 97 F. (2d) 231.

Eighth Circuit

Broders v. Lage, 25 F. (2d) 288;
 Stanley's Incorporated Store No. 3 v. Earl, 25 F. (2d) 458,
 cert. den. 278 U. S. 637;
 Raich v. Olson, 25 F. (2d) 865;
 American State Bank v. Ullrich, 28 F. (2d) 753;
 Gate City Clay Co. v. Dickey, 39 F. (2d) 581;
 Schnurr v. Miller, 49 F. (2d) 109;
 Hunter v. Commerce Trust Co., 55 F. (2d) 1;
 In re Schute-United, Inc., 59 F. (2d) 553;
 Hudspeth v. Woods, 70 F. (2d) 504;
 Vitagraph, Inc. v. St. Louis Properties Corp., 77 F. (2d)
 590;

Credit Alliance Corp. v. Atlantic, Pacific & Gulf R. Co.,
77 F. (2d) 595;
St. Louis Can Co. v. General American Life Ins. Co., 77 F.
(2d) 598;
Hey v. Ward, 84 F. (2d) 193;
Griffith v. Equitable Life Assurance Society, 91 F. (2d) 9;
Schoppe v. First Trust Co., 101 F. (2d) 417.

Ninth Circuit

Standard Sanitary Mfg. Co. v. Momsen-Dunnegan-Ryan, 51
F. (2d) 684;
In re Miller & Harbaugh, 56 F. (2d) 141;
In re Interstate Oil Corp., 63 F. (2d) 674;
Wilkerson v. Cooch, 78 F. (2d) 311;
Robinson v. Edler, 78 F. (2d) 817;
In re Harris, 78 F. (2d) 849;
Raentsch v. American Co., 82 F. (2d) 770;
Bank of American Nat. Trust & Savings Assn. v. Cuccia,
90 F. (2d) 100;
Harrison Securities Co. v. Spinks Realty Co., 92 F. (2d)
904;
In re National Finance & Mortgage Corp., 96 F. (2d) 74.

Tenth Circuit

In re Merchants' Oil Co., 36 F. (2d) 655;
Quarles v. Dennison, 45 F. (2d) 585;
Mason v. Hardy-Griffin-Sheff, 45 F. (2d) 587;
Marcy v. Miller, 95 F. (2d) 611.

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SUPREME COURT OF THE UNITED STATES.

No. 69.—OCTOBER TERM, 1940.

Reconstruction Finance Corporation, Prudence-Bonds Corporation, President and Directors of the Manhattan Company, et al., Petitioners,

vs.

Prudence Securities Advisory Group, Independent Prudence Bondholders Committee, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 6, 1941.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

Dickinson Industrial Site, Inc. v. Cowan, 309 U. S. 382, decided on March 11, 1940, held that appeals from all orders making or refusing to make allowances of compensation or reimbursement under Ch. X of the Chandler Act (52 Stat. 840) may be had only at the discretion of the Circuit Court of Appeals. Prior to that decision the Circuit Court of Appeals for the Second Circuit had held that appeals from such orders (involving \$500 or more) could be had as a matter of right. *London v. O'Dougherty*, 102 F. (2d) 524. Subsequent to the decision in the *London* case and prior to the decision of *Dickinson Industrial Site, Inc. v. Cowan*, *supra*, petitioners endeavored to take appeals from compensation orders, which had been entered in reorganization proceedings under former § 77 B. (48 Stat. 912), by filing within the appeal period provided by § 25(a) of the Bankruptcy Act, notices of appeal in the District Court. No application for leave to appeal was made to the Circuit Court of Appeals at any time. Some of the appeals were argued in May, 1939, the balance in February, 1940, some of the notices of appeal having been filed in the District Court in March, 1939, and some in November, 1939. While the matter was under advisement in the Circuit Court of Appeals we decided *Dickinson Industrial Site, Inc. v. Cowan*, *supra*. Thereupon certain respondents moved for dismissal of the appeals for want of jurisdiction. All of the appeals were

2 *R. F. C. et al. vs. Prudence Securities Advisory Group et al.*

dismissed, some on those motions and some by the court *sua sponte*, 111 F. (2d) 37. The case is here on petition for certiorari which we granted in view of the importance of the procedural problem in administration of the Bankruptcy Act and of the asserted substantial conflict of the decision below with *Baxter v. Savings Bank*, 92 F. (2d) 404, and *Wilson v. Alliance Life Ins. Co.*, 102 F. (2d) 365, decided by the Circuit Court of Appeals for the Fifth Circuit.

Sec. 250 of the Chandler Act provides that appeals from compensation orders "may, in the manner and within the time provided for appeals by this Act, be taken to and allowed by the circuit court of appeals." Petitioners contend that when § 250 states that such appeals may be taken "in the manner . . . provided for appeals by this Act", it necessarily makes applicable § 24(b) which provides that such appellate jurisdiction shall be exercised "by appeal and in the form and manner of an appeal". They argue, therefore, that Rule 73(a) of the Federal Rules of Civil Procedure, which allows an appeal to be taken "by filing with the district court a notice of appeal" in those cases where an "appeal is permitted by law from a district court to a circuit court of appeals", governs appeals under § 250 as well as other appeals, since General Order No. 36 makes those rules applicable to appeals in bankruptcy, "except as otherwise provided in the Act". In our view, however, Rule 73(a) is not applicable to appeals under § 250 (see 2 Collier on Bankruptcy (14th ed.) p. 918) for they are permissive appeals which may be had not as of right but only in the discretion of the Circuit Court of Appeals. Since § 250 provides that they may "be taken to and allowed by the circuit court of appeals", the proper procedure for taking them is by filing in the Circuit Court of Appeals, within the time prescribed in § 25(a), applications for leave to appeal, not by filing notices of appeal in the District Court as was done here. As respondents maintain, that is the fair implication from our conclusion in *Dickinson Industrial Site, Inc. v. Cowan*, *supra*, at p. 385, that such appeals "may be had only at the discretion of the Circuit Court of Appeals." But while the appeals under § 250 must be "taken to" the Circuit Court of Appeals within the time prescribed in § 25(a) we do not think it is the fair intentment of that section that they must also be "allowed" within that time. Cf. *In-re Foster Const. Corp.*, 49 F. (2d) 213; *Price v. Spo-*

kane Silver & Lead Co., 97 F. (2d) 237. If that were true, the existence of the right to appeal would be subject to contingencies which no degree of diligence by an appellant could control. Ambiguities in statutory language should not be resolved so as to imperil a substantial right which has been granted.

The court below was in substantial agreement with the foregoing construction of § 250. It went on to hold, however, that since petitioners did not seek an allowance of their appeals in that court within the time prescribed in § 25(a), it had no jurisdiction to allow them. We take a different view.

The procedure followed by petitioners was irregular. Normally the Circuit Court of Appeals would be wholly justified in treating the mere filing of a notice of appeal in the District Court as insufficient. But the defect is not jurisdictional in the sense that it deprives the court of power to allow the appeal. The court has discretion, where the scope of review is not affected, to disregard such an irregularity in the interests of substantial justice. Cf. *Taylor v. Voss*, 271 U. S. 176, dealing with appeals and petitions for revision under earlier provisions of the Act. In this case the effect of the procedural irregularity was not substantial. The scope of review was not altered. There was no question of the good faith of petitioners, of dilatory tactics, or of frivolous appeals. Hence it would be extremely harsh to hold that petitioners were deprived of their right to have the court exercise its discretion on the allowance of their appeals by reason of their erroneous reliance upon the permanency of *London v. O'Dougherty*, *supra*. This conclusion does not do violence to *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172. As we indicated in *Dickinson Industrial Site, Inc. v. Cowan*, *supra*, the *Shulman* case stated the rule of permissive appeals which was carried over into § 250. The failure to comply with statutory requirements, however, is not necessarily a jurisdictional defect. Cf. *Alaska Packers Ass'n v. Pillsbury*, 301 U. S. 174.

For the reasons stated, we hold that the Circuit Court of Appeals had the power to allow the appeals.

Reversed.

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SUPREME COURT OF THE UNITED STATES.

No. 69.—OCTOBER TERM, 1940.

Reconstruction Finance Corporation,
Prudence-Bonds Corporation, Presi-
dent and Directors of the Manhattan
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vs.

Prudence Securities Advisory Group,
Independent Prudence Bondholders
Committee, et al.

On Writ of Certiorari to
the United States Cir-
cuit Court of Appeals
for the Second Circuit.

[January 6, 1941.]

Mr. Justice REED, concurring.

I am of opinion that timely application to the circuit court of appeals for leave to appeal is a jurisdictional requirement, and that the practice followed in this case cannot be reduced to a mere procedural irregularity. *Farrar v. Churchill*, 135 U. S. 609, 612-13; *Old Nick Williams Co. v. United States*, 215 U. S. 541; *Shulman v. Wilson-Sheridan Hotel Co.*, 301 U. S. 172. However, when petitioners filed their notices of appeal in the district court the proper procedure was not settled, and petitioners were misled by the decision of the court below in *London v. O'Dougherty*, 102 F. (2d) 524. In these unique circumstances I think that reversal of the judgment is justified by our broad power to make such disposition of the case as justice requires. *Watts, Watts & Co. v. Unione Austriaca*, 248 U. S. 9, 21; *Montgomery Ward & Co. v. Duncan*, No. 30 this term, decided December 9, 1940, p. 9. In rare instances such as the case at bar this power is appropriate for curing even jurisdictional defects. Cf. *Rorick v. Commissioners*, 307 U. S. 208, 213.

Mr. Justice ROBERTS joins in this opinion.